# THE OLD YELLOW BOOK

## *THE SOURCE of BROWNING'S "THE RING & THE BOOK"*

TRANSLATED AND EDITED BY
CHARLES W. HODELL

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POETRY & THE DRAMA

THE OLD YELLOW BOOK
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*Source book of Robert Browning's*
The Ring and the Book

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# PUBLISHERS' NOTE

Some years before his death Browning promised to leave the *Old Yellow Book*, together with other books and manuscripts, to Balliol College, Oxford, and his son carried out the promise soon after the poet's decease. The Carnegie Institution of Washington, D.C., has reproduced the entire book in photo-facsimile, with translation and editing by Charles W. Hodell. The Publishers gratefully acknowledge the kindness and generosity of the Institution in allowing the translation of the *Yellow Book* to be reproduced in the present volume. They have also to acknowledge their indebtedness to Professor Hodell for the courtesy he has shown, and the great help he has given in editing these volumes. Hitherto the work has been practically inaccessible to British readers, and in its new dress it is hoped it will be found invaluable in interpreting the greatest work of Robert Browning.

# INTRODUCTION

THE *Old Yellow Book* is a soiled and bloody page from the criminal annals of Rome two centuries ago, saved apparently by mere chance for the one great artist of modern literature who could best use it, and who has raised this record of a forgotten crime to a permanent place in that ideal world of man's creation where Caponsacchi and Pompilia have joined the company of Paolo and Francesca, of the Red Cross Knight, of Imogen, of Marguerite and Faust, and of Don Quixote.

One June day of 1860, Robert Browning passed from the Casa Guidi home to enjoy the busy life of Florence. There, "pushed by the hand ever above my shoulder," he entered the Piazza of San Lorenzo:

> crammed with booths,
> Buzzing and blaze, noontide and market-time.

He had brought home from such wanderings many a rare old tapestry, or picture, or carving from the long artistic past of the city. This day his eye caught the soiled, vellum-covered volume, crowded between its insignificant neighbours. "One glance at the lettered back," declares the poet, "and Stall! a lira made it mine." All the way home and all day long, he pored over these pages, until by nightfall he had so mastered the facts of the case that the whole tragedy lay plain before his mind's eye.

The book led him, and leads us, back to the morning of January 3, 1698, when all Rome was astir with the sensation of a brutal assassination. The aged Comparini, cut to pieces in their own home in the very heart of Rome on the evening before by a band of assassins, were now exposed to the view of an excited mob of the curious and idle. Pompilia, desperately wounded, lay a-dying. A police captain and posse were in pursuit of the criminals, one of whom was a nobleman who had held office in the household of one of the great cardinals. Toward night the criminals were brought back to the city, and were followed through the streets to the prison doors by a great throng.

Just seven weeks later and again Rome was throbbing with

excitement. Unwonted crowds were pressing into the Piazza del Popolo, where gallows and scaffold had been prepared. At last, up the Corso filed the Brotherhood of Death with their black gowns and great cross, and behind them, in separate carts, the five criminals. In the midst of a sea of upturned faces Guido and his fellows met their end, and the curtain fell.

The *Old Yellow Book* is the record of the court procedure of those seven intervening weeks, and shows us the whole legal battle fought to save Guido, while Rome looked on with the fascinated interest which has always attended the great murder trials. It includes the lawyers' arguments for and against the accused, together with a part of the evidence brought into court, and some additional miscellaneous data on the case. All this had evidently been assembled by the Florentine lawyer, Cencini, to whom certain letters included are addressed. He seems to have been interested in the case as a precedent on an important and much disputed point of law, "whether and when a husband may kill an adulterous wife." Cencini may also have had some professional relation with the Franceschini family at Arezzo. At any rate, he set the material in order, provided title-page and index, and a transcript of the record in a criminal case against Pompilia in the Tuscan courts (pp. 5-7), and bound it securely in the vellum cover which conveyed it to the poet's hands more than a century and a half later.

Whatever meaning this volume may have as a legal precedent, it had for Browning, and has for the lay reader, a deep human interest as the incomplete record of a sordid series of intrigues for certain properties, ending at last in a fearful crime.

Guido Franceschini, scion of a noble but impoverished Tuscan family, had sought his fortunes in Rome, and had attained a secretaryship in the household of Cardinal Lauria. His brother, the Abate Paolo, a shrewd and effective man, rose much higher, at last attaining important office among the Knights of St. John. Guido, less astute and less ingratiating, reached middle life with but scant success, and at last was left unprovided. With the assistance of Abate Paolo, he planned to recoup his fortunes by a bourgeois marriage. Though past forty years of age and of unattractive appearance, he won, by his noble name and subtle intrigue and falsification, the thirteen-year-old daughter of the Comparini, of the well-to-do middle class of Rome. After the marriage in December

1693, Pompilia and her parents accompanied Guido back to Arezzo, where, in the ruinous Franceschini *palazzo*, the Comparini had ample opportunity to repent their folly. Bitter contentions soon arose, and at last the Comparini fled from the brutalities of their son-in-law, and returned to Rome. There they published broadcast the sordid poverty and the ignoble brutality of their persecutors, probably printing and circulating the affidavit of the servant (pp. 49-53). Guido seems to have retorted by circulating the forged letter from Pompilia (pp. 56, 57). But they struck a more deadly blow at the pride of the Franceschini when they revealed that Pompilia was not their own child, but was of ignominious parentage. And in the spring of 1694 they brought suit before Judge Tomati for the recovery of the dowry monies paid to Franceschini—a bitter humiliation to the greedy poverty of the Franceschini. It must have been a scandalous suit, bringing dishonour to both parties as their domestic difficulties were exposed to the throngs of the curious. In this trial were adduced the letters of the governor (pp. 89, 90) and of the Bishop of Arezzo (p. 99). The Comparini lost their suit, but appealed to the Rota, and their case was pending for several years, during which time they may have baited the Franceschini with spiteful scandals.

In the meantime, the child-wife, Pompilia, was left in desperate plight—despised and hated by her husband's family. Her situation grew intolerable. Guido had evidently determined to rid himself of her without relaxing his grip on her property. His brutalities were systematic and cunning. At last she was driven to flee for her life, and on April 29, 1697, made her escape under the protection of Caponsacchi, a gallant young priest. It was a desperate step, gravely reprehensible in the eyes of the world. The fugitives pressed toward Rome, but Guido overtook them at Castelnuovo, fifteen miles short of their destination, and had them arrested.

At Rome, criminal charges of flight and adultery were brought against them. This Process of Flight, as it is repeatedly called in the *Yellow Book*, continued all through the summer. It was for their defence in this case that Pompilia and Caponsacchi made their affidavits (pp. 90 and 95), giving their motives for the flight. At the same time Guido urged the evidence of the love-letters (pp. 99-106), which he claimed to have found at the time of the arrest of the fugitives. In September, judgment was rendered against Caponsacchi—

relegation for three years to Civita Vecchia—a punishment commensurate with indiscretion rather than with crime. Pompilia was unsentenced, but was retained for a month in safekeeping in the nunnery delle Scalette, and was then permitted to return to the home of her foster-parents, the Comparini, though still technically a prisoner in this home (p. 159). Here on December 18 a boy was born.

On Christmas Eve, Guido reached Rome with four young rustics, whom he had hired to assist him in the assassination. For a week he lurked in the villa of his brother, Abate Paolo, who had left Rome. Then, on the evening of January 2, he won entrance to the home of the Comparini by using the name of Caponsacchi. The parents were instantly stabbed to death, and Pompilia was cut to pieces with twenty-two wounds. Leaving her for dead, Guido and his cut-throats fled, as the outcries of the victims had given the alarm. That night they travelled afoot nearly twenty miles, but were pursued by the police, and were arrested with the bloody arms still in their possession.

Such was the crime, and the *Old Yellow Book* is the record of the legal battle over the assassins, which was fought through the criminal courts of Rome, presided over by Vice-governor Venturini. The prosecution and defence alike were conducted by officers of the court, two lawyers on each side, the Procurator and Advocate of the Poor for the defendants, and the Procurator and Advocate of the Fisc against them. As the fact of the crime was definitely ascertained, the legal battle turned entirely on the justification or condemnation of the motive of the crime. The defence maintained that the assassination had been for honour's sake, and the unwritten law, to which appeal is made in generation after generation, was urged at every point. That Guido had suffered unspeakable ignominy cannot be denied; that his wife had been untrue to him even in the perilous flight with Caponsacchi is unproved, as the courts had evidently held in the Process of Flight. The prosecution, on the other hand, reiterated in every argument their reading of Guido's motive—greed. Greed had led him to marry Pompilia. Greed had occasioned his disgraceful wranglings with the Comparini. Defeated greed had made him torture his wife into scandalous flight, and calculating greed had led him to commit the murder at a time and in a manner to save the whole property to himself. Still further, said the prosecution, not only was his motive bad, but the

crime was committed in a way which involved him in half a dozen accessory crimes, each of them capital. Such is the drift of the argument, which is fortified at every point by citation of precedent from the legal procedure of all ages. Altogether it is a highly skilled legal battle according to the technical limitations of the game, while the simple appeals to equity and to common human feeling hardly enter at all.

The trial proceeded in two stages. The earlier one, during the latter half of January, was opened by Arcangeli (pamphlet 1), supported by Advocate Spreti (pamphlet 2). The prosecution is opened by Procurator Gambi (pamphlet 5), supported by Advocate Bottini (pamphlet 6). Arcangeli and Bottini make further argument in pamphlets 3 and 14. Two pamphlets of evidence were assembled and printed—for the defence, pamphlet 7; and for the prosecution, pamphlet 4. The latter part of this stage of the case is much occupied with arguing whether Guido and his companions may be tortured to get a fuller statement from them. In spite of the efforts of Guido's attorneys, the torture was evidently decreed, and fuller evidence was forced from the defendants, though one of them bore the torture till he fainted twice. The trial then enters on its second stage, in which, after some preliminary skirmishing about the legality of the torture and the status of the evidence given under this torture, the lawyers settle to their most masterly work. Arcangeli and Spreti develop an elaborate and skilled defence (pamphlets 8 and 9), and are answered by Bottini's masterpiece for the prosecution (pamphlet 13). Spreti closes the defence in pamphlet 16. Pamphlet 11 presents some additional matters of evidence.

All these arguments and summaries of evidence were printed by the official papal press (see the imprint *Typis Rev. Cam. Apost.*), probably overnight, between the sessions of the court, as typewritten briefs would be prepared to-day. Few copies were printed, and these were solely for the judges and attorneys in the case. There would be no popular circulation of them in Rome at large. The particular copies included in the *Old Yellow Book* were probably gathered by one of these attorneys, and sent to Signor Cencini in Florence (letter iii. p. 238).

We need but look to our own age to rest assured that outside of the court room all Rome was athrill with interest in this murder case, and was speculating on the fate of the accused. The attorneys for the defence, in the midst of the

trial, made a sudden appeal to this public interest and sought the support of public sentiment by means of an anonymous pamphlet (pamphlet 10) written in Italian and printed without an imprint or signature, but evidently addressed to the bar of public opinion. It seems to have been written by Guido's lawyers, or their lackeys, for it repeats the various points already made in the arguments. Whether it was distributed free or was sold for a small price, it must have been seized and devoured by all Rome as are the journalistic reports of notorious criminal trials to-day. We can imagine the alarm of the prosecution when they perceived this flank movement against them. With all possible haste they prepared their reply, also in Italian and without signature or imprint, and probably within a day or two had issued this response (pamphlet 15), which meets the other pamphlet at every point, and bitterly arraigns the greed of Guido. These two pamphlets evidently suggested to Browning his "Half-Rome" and "Other Half-Rome."

There must have been other popular exploitations of this crime. Two manuscript Italian narratives of it have been discovered. The first of these (pp. 259-266) was found in London and sent to Browning, who used it extensively in writing his poem. The second (pp. 269-281) was discovered a few years ago in Rome. Other accounts may yet come to light.

The trial of Guido and his companions was carried forward to a prompt judgment, and on February 18 they were pronounced guilty and were condemned to death. A technical staying of sentence for four days was granted by reason of Guido's *clerical privilege*, but execution followed on February 22. The *Old Yellow Book* includes three original letters (pp. 237-8) written from Rome immediately after the execution to Signor Cencini at Florence.

Yet the case was not quite at an end. A number of civil suits were promptly instituted by various claimants for the property of the Comparini. The Franceschini still pushed their claim in spite of the infamy they had suffered for that property. Pompilia's executor, Tighetti, claimed all in trust for the child, Gaetano. Then the refuge of the Convertites, under their legal right to the property of all women of evil life who died in Rome, accused the memory of Pompilia and claimed her property. The case seemed to be entering on one of those interminable struggles in court. The Procurator

Lamparelli (pamphlet 17) goes back to analyse again the motives in the whole case and to justify Pompilia's innocence. The remainder of this trial is lost to us save for the final *Definitive Sentence* of the courts (pamphlet 18), issued in September 1698, which clears the memory of Pompilia entirely and for ever in the eyes of the law.

This was the record which fell into Browning's hands. The poet tells of his immediate interest in the tragedy, partly due to that common human interest in great crimes, partly to the casuistic presentation of motive throughout the *Book*, partly to his championing the rights of Pompilia, dishonoured and slain not merely by a brutally selfish husband, but by a corrupt social condition around her.

After some delay, Browning saw his way to embody in art the story which had interested him so deeply. The plan came to him, according to W. M. Rossetti, one day while he was walking at Biarritz, and from 1862 till the publication in 1868-9, he was working continuously on *The Ring and the Book*. He had mastered every detail of the *Yellow Book* by continuous re-readings, and in his art he was scrupulously, but never laboriously, accurate to the facts before him. In the poem he names thirty-three persons exactly as he found them in his original. Place names are adopted with the same accuracy. The specific dates recorded in the *Book* are followed at all points, save in the significant change of the date of Caponsacchi's rescue of Pompilia from April 29 to 23, St. George's Day. The incidents of the tragedy, even when compromising to Pompilia, whose cause he championed, are used without repression or falsification. And perhaps most remarkable of all, the poet had mastered all the technical paraphernalia and phraseology of the lawyers, and uses these with minute care, not entirely devoid of misunderstanding and error. In the *Book* he found all the points of law, all the precedents and authorities, and almost all of the Latin phrases and sentences found in the monologues of the lawyers of the poem. A remarkable instance of this is seen in his word for word adaptation of the long peroration of Arcangeli (pamphlet 8) in the close of the monologue of the Arcangeli of the poem. And the actual letter of Arcangeli (p. 237) is reproduced verbatim in the poem, book xii. ll. 239-88. Altogether the poet affords one of the most remarkable illustrations of literal and detailed accuracy in the use of the raw material of art.

Yet here, as in all cases of true art, the greatness of the final

A Setting-forth

of the entire Criminal Cause

against

GUIDO FRANCESCHINI, Nobleman of Arezzo,

and his Bravoes,

who were put to death in Rome,

February 22, 1698.

The first by beheading, the other four by the gallows.

ROMAN MURDER-CASE.

In which it is disputed whether and when a Husband may kill his Adulterous Wife without incurring the ordinary penalty.

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Robert Browning.

ἐμοὶ μὲν ὧν Μοῦσα καρτερω-
-τατον βέλος ἀλκῇ τρέφει.*

* *But for me the Muse in her strength prepares her mightiest arrow.*

commissum homicidium, & dicit, quod Hominibus talitèr coadunatis parcendum fuit, quià huiusmodi coadunatio fuerat licita Marito Principali *Vol.2.Iason.in leg.1.§.usufructuarius num.5 præsertim in secunda limitat.ff.d. nou.oper.nonciat.* vbi quod quàuis vindicta, quæ à statuto permittitur, non possit alteri demandari, tamen is, cui illa permittitur, potest secùm adhibere Socios, & Complices ad istum actum, qui si simul cùm eo occidant, non tenebuntur de occiso, nec de Auxilio præstito, & dicit, quod ista sua opinio est multum Cordi tenenda *Capoll.cons.Crimin.4.num.13. vers.2.similiter, & num.seqq.* & exemplificat in pluribus casibus signantèr in illo de hominibus occidentibus conuersantem cum Sorore eius, qui illos coadunauerat, & dicit, quod non debuerant puniri, sicuti, nec ipse principalis, & quod ita obtinuit iudicati, & hoc idem repetit *cons.73.num.11.& de seruit.Vrban.prædior.cap.23.num.11. Roland. consil. 34. numer. 8. & seqq. vsque ad 18. lib. 2.Soccin.Iun.cons.34.num.13.& 14.volum.2.* vbi nisi fortè quis velit dicere, quod puniri debeant minorè pœna, quàm principalis prout sæpè contingit in auxiliatoribur, & loquitur in his nostris terminis hominum a Marito coadunatorum ad effectum occidendi adulterum Vxoris suæ, in quibus etiàm terminis consuluit *Paris cons.154.num.20.& seqq.vol.4.Carer.in pract.Crimin.in tract.3.de homicid.& assass. §.8.excusatur patèr num.13.* vbi de Patre, qui per assassinium fecerat occidi filiam turpitèr conuersantem, & dicit quod nec Pater nec occidens tenetur fol. 169. & §.9. *excusatur Maritus num.11.* vbi hoc idem tenet, in terminis Mariti, eiusque Mandatarij *fol.170.à tergo* sequitur *Mart.vot, seù decision. 206.num.9.Marsil singul.175.per tot.* Vbi posita in principio conclusione, quod concesso vno omnia videntur esse concessa, per quæ deuenitur ad illud, ex illa infert ad præsentem Casum, & plures adducit rationes *Cassan.ad consuetud.Burgund. rubric.5.§.primo tit.Des rentes, num.43.pag.mihi 815.* vbi quod homines talitèr coadunati, si simul occidant cùm principali, non tenentur de occiso, nec de auxilio præstito, & in eisdem terminis *Garz.decis.71.per tot.*

Idque non obstante quod aliquis prædictorum proprijs manibus vulnerasset, vel etiam occidisset aliquem ex prædictis, prout Franciscus fassus fuit se quatuor, aut quinq; vulneribus affeciſſe

[Facsimilie Page from the Original "Old Yellow Book."]

# SENTENCE OF THE CRIMINAL COURT OF FLORENCE

*February* 15, 1697 A.D.

ATTESTATION by me undersigned how, in the order of the affairs of the Governors, which are set before His Serene Highness, in the Chancery of the Illustrious Signori Auditori of the Criminal Court of Florence, there appears among other affairs of business, under decision 3549, the following of tenor as written below, that is Arezzo against

1. Gregorio, son of Francesco Guillichini, not described.
2. Francesca Pompilia Comparini, wife of Guido Franceschini, and
3. Francesco, son of Giovanni Borsi called Venerino, servant of Agosto, Host at the " Canale,"

because the second Accused, against her honour and conjugal faith, had given herself up to dishonest amours with the Canon Giuseppe Caponsacchi and with the first Accused, who instructed her, as you may well believe, to part from the aforesaid City of Arezzo, the evening of April 28, 1697. And, that they might not be discovered and hindered, the second Accused put a sleeping-potion and opium in her husband's wine at dinner. At about one o'clock the same night, the said Canon Caponsacchi and the first Accused conducted the aforesaid second Accused away from the home of her husband. As the gates of the city were closed, they climbed the wall on the hill of the Torrione; and having reached the " Horse " Inn, outside of the gate San Clemente, they were there awaited by the third Accused with a two-horse carriage. When Canon Caponsacchi and the second Accused had entered into the said carriage, the word was given by him, the aforesaid first Accused, and they set out then upon the way toward Perugia, the said third Accused driving the carriage as far as Camoscia. And while they were travelling along the road they kissed one another before the very face of the third Accused.

Still further, the second Accused, along with the first Accused and Canon Caponsacchi, carried away furtively from the house

of the said Guido, her husband, from a chest locked with a key, which she took from her husband's trousers [the following articles]: About 200 scudi in gold and silver coin; an oriental pearl necklace worth about 200 scudi; a pair of diamond pendants worth 84 scudi; a solitaire diamond ring worth 40 scudi; two pearls with their pins, to be used as pendants, 6 scudi; a gold ring with turquoise setting worth 2 scudi; a gold ring set with ruby worth 36 scudi; an amber necklace worth 5 scudi; a necklace of garnets alternated with little beads of fine brass worth 6 scudi; a pair of earrings in the shape of a little ship of gold with a pearl worth 16 scudi; two necklaces of various common stones worth 4 scudi; a coronet of carnelians with five settings and with a cameo in silver filigree worth 12 scudi; a damask suit with its mantle, and a petticoat of a poppy colour, embroidered with various flowers, worth 40 scudi; a light-blue petticoat, flowered with white, worth 8 scudi; two vests to place under the mantle worth 2 scudi; a pair of sleeves of point lace worth 20 scudi; another pair of sleeves fringed with lace worth 5 scudi; a collar worth 4 scudi; a scarf of black taffeta for the shoulder with a bow of ribbon worth 8 scudi; an embroidered silk cuff worth 14 scudi; two aprons of key-bit pattern with their lace worth 12 scudi; a pair of scarlet silk boots worth 14 scudi; a pair of woollen stockings, a pair of white linen hose, and a pair of light-blue hose, worth 5 scudi; a snuff-coloured worsted bodice with petticoat, ornamented with white and red pawns, worth 3 scudi; a blue and white coat of yarn and linen, adorned with scarlet and other coloured ornaments, worth 10 scudi; a worsted petticoat of light-blue and orange colour, striped lengthwise, with yellow lines and with various colours at the feet, worth 14 scudi; an embroidered petticoat worth 9 scudi; a silk cuff worth 5 scudi; four linen smocks for women worth 14 scudi; a pair of shoes with silver buckles worth 8 scudi; many tassels and tapes of various sorts worth 14 scudi; six fine napkins worth 7 scudi; a collar of crumpled silk worth 7 scudi; two pairs of gloves of a value of 4 scudi; four handkerchiefs worth 5 scudi; a little silver snuff-box with the arms of the Franceschini house upon it worth 16 scudi; a coat of her husband Guido, rubbed and rent by the lock of a chest where he kept part of the aforesaid clothing. And they had converted the whole to their own uses against the will of the same, the first Accused and Canon Caponsacchi having scaled the walls of the city in company with the second Accused, as soon as she had committed adultery with them. And the

said third Accused had given opportunity for flight to the said second Accused along with the Canon, in the manner told.

Therefore the Commissioner of Arezzo was of opinion to condemn arbitrarily the first Accused to five years' confinement at Portoferrio with the penalty of the galleys for the same length of time, not counting the reservation of 15 days to appear and clear himself; to condemn the second Accused to the penalty of the Stinche for life and to the restitution of what was taken away, with the abovesaid reservation; and that the third Accused be not prosecuted further and be liberated from prison. But the Criminal Court was of opinion that the first Accused should be condemned to the galleys during the pleasure of His Serene Highness, with the said reservation. As to the second Accused, who was imprisoned here in Rome, in a sacred place, it suspended the execution. And for the third, who had done no voluntary evil, it gave up further inquiry.

Again proposed in the said business before His Serene and Blessed Highness with the signature of December 24, 1697.

The opinion of the Court stands approved.

In sign of which,

I, Joseph Vesinius, J. V. D., an official in the Criminal Court of Florence, etc., in faith whereto, etc.

[File-title of Pamphlet 1.]

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*By the Most Illustrious and Most Reverend Lord Governor in Criminal Cases:*

# *ROMAN MURDER-CASE*

*On Behalf of Count Guido Franceschini, Prisoner, against the Fisc.*

*Memorial of fact and law.*

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*At Rome, in the type of the Reverend Apostolic Chamber,*
1698.

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# ROMANA HOMICIDIORUM

[Pamphlet I.]

Most Illustrious and Most Reverend Lord Governor:

Count Guido Franceschini, born of a noble race, had married, under ill omen, Francesca Pompilia, whom Pietro and Violante had asserted (even to one occupying a very high office) to be their own daughter. After a little while, she was taken to Arezzo, the country of her husband, along with her foster-parents, and was restrained from leading her life with utter freedom. Yet she has made pretence that she was hated on the pretext of sterility, as is clearly shown in her deposition during her prosecution for flight from her husband's home. Both she and her parents took it ill that they were denied their old free life, and they urged their daughter to make complaint before the Most Reverend Bishop, saying that she had been offered poison by her brother-in-law. At the departure of this couple, when they were about to return to the City, they most basely instigated her—yes, and even commanded her by her duty to obey them—that she should kill her husband, poison her brother-in-law and mother-in-law, and burn the house; and then with the aid of a lover to be chosen thereafter, she should put into effect her long-planned flight back to the City. (But all this should be done after their departure, lest they might seem to have given her evil counsel.) [Such facts] may be clearly deduced from one of the letters presented as evidence in the same prosecution.

When these pseudo-parents had returned home, they declared that Francesca was not born of themselves, but had been conceived of an unknown father by a vile strumpet. They then entered suit before Judge Tomati for the nullification of the dowry contract.

Day by day the love of Pompilia for her husband kept decreasing, while her affection for a certain priest was on the increase. This affair went so far that on an appointed night, while her husband was oppressed with sleep (and I wish I could say that she had no hand in this, and had not procured drugs from outside), she began her flight from her husband's house

toward Rome, nor was this flight without theft of money and the company of her lover. Her most wretched husband pursued them, and she was imprisoned not far from the City. Then, when after a short time they were brought to trial, the lover was banished to Civita Vecchia for adultery, and she herself was placed in safe keeping. But owing to her pregnancy she returned to the home of Pietro and Violante, where she gave birth to a child (and I wish I could say that it had not been conceived in adultery). This increased the shame and indignation of the husband, and the wrath, which had long been stirred, grew strong, because his honour among upright men was lost and he was pointed out with the finger of scorn, especially in his own country, where a good reputation is much cherished by men who are well-born. Therefore his anger so impelled the luckless man to fury, and his indignation so drove him to desperation, that he preferred to die rather than to live ignominiously among honourable men. With gloomy mind, he rushed headlong to the City, accompanied by four companions. On the second night of the current month of January, under the show of giving a letter from the banished lover, he pretended to approach the home of the Comparini. When at the name of Caponsacchi the door was opened, he cut the throats of Violante and Pietro, and stabbed Francesca with so many wounds that she died after a few days.

While this desperation continued, his dull and unforeseeing mind suggested no way to find a place of safety. But accompanied by the same men, he set out for his own country along the public highway by the shortest route. Then, while he was resting upon a pallet in a certain tavern, he was arrested, together with his companions, by the pursuing officers.

Great indeed is this crime, but very greatly to be pitied also and most worthy of excuse. Even the most severe laws give indulgence and are very mild towards husbands who wipe out the stain of their infamy with the blood of their adulterous wives. [Citation of *Lex Julia de Adulteriis*, *Lex Cornelia de Sicariis* and the Gracchian law. Cf. *Ring and Book*, I. 2268.]

This indeed was sanctioned in the laws of the Athenians and of Solon (that is, of the wisest of legislators), and what is more even in the rude age of Romulus, law 15, where we read:

"A man and his relatives may kill as they wish a wife convicted of adultery." [Citations; and likewise in the Laws of the Twelve Tables, see Aulus Gellius, etc.]

I hold, to begin with, that there can be no doubt of the adultery

of the wife [for several reasons]. [First], her flight together with her lover during a long-continued journey. [Citations.]

[Second], the love letters sent by each party; these cannot be read in the prosecution for flight without nausea. [Citations.]

[Third], the clandestine entry of the lover into her home at a suspicious time. [Citations.]

[Fourth], the kisses given during the flight (p. 100) according to the following sentiment: "Sight, conversation, touch, afterwards kisses, and then the deed [adultery]." [Citations.]

[Fifth], their sleeping in the same room at the inn. [Citations.]

[Sixth], the sentence of the judge, who condemned the lover for his criminal knowledge of her, which made this adultery notorious. [Citations.]

Furthermore, we are not here arguing to prove adultery for the purpose of demanding punishment [upon the adulteress], but to excuse her slayer, and for his defence; in this case, even lighter proofs would be abundant, as Matthæus advises. [Citations.]

These matters being held as proved, the opinion of certain authorities who assert that a husband is not excusable from the ordinary penalty, who kills his adulterous wife after an interval, does not stand in our way. For the aforesaid laws speak of the wife who had been found in her guilt and has been killed incontinently. Hence such indulgence ought not to be extended to wife-murder committed after an interval, because the reins should not be relaxed for men to sin and to declare the law for themselves. [Citations.]

Furthermore, Farinacci does not affirm this conclusion, but shows that he is very much in doubt, where he says: "The matter is very doubtful with me, because injured honour and just anger—both of which always oppress the heart—are very strong grounds for the mitigation of the penalty." Matthæus well weighs these words on our very point. And both Farinacci and Rainaldi conclude that the penalty can be moderated at the judgment of the Prince.

I humbly pray that this be noted. The aforesaid laws, which seem to require discovery in the very act of sin, as some have thought, do not decide in that way merely for the purpose of excusing a husband moved to slaughter by a sudden impulse of wrath and by unadvised heat. But they so decide lest on any suspicion of adultery whatsoever, oftentimes entirely without foundation, men should rush upon and kill their wives, who are

frequently innocent. Hence the "discovery in the very act of crime," which is required by law, is not to be interpreted, nor to be understood, as discovery in the very act of licence, but is to be referred to the proof of the adultery, lest on trifling suspicion a wife should be given over to death. But when the adultery is not at all doubtful, there is no distinction between one killing immediately and killing after an interval, so far as the matter of escaping extreme punishment is concerned. [Citations.]

For whenever a wife is convicted of adultery, or is a manifest adulteress, she is always said to be "taken in crime." [Citations.]

And in very truth the reasons adduced by those holding the contrary opinion are entirely too weak. For murder committed for honour's sake is always said to be done immediately, whensoever it may be committed. Because injury to the honour always remains fixed before one's eyes, and by goading one with busy and incessant stings it urges and impels him to its reparation. [Citations.]

Such relaxation of the reins to husbands, for taking into their own hands the law, would indeed be too great if the law of divorce were still valid. For in that case husbands would not be permitted to make such reparation of their honour. For another way would be satisfactorily provided for them, namely, in their right to dismiss and repudiate the polluted wife. In this way they could put far from themselves the cause of their disgrace, yes, and the very ignominy itself. But when by the divine favour our Gentile blindness was removed, and matrimony was acknowledged to be perpetual and indissoluble, those were indeed most worthy of pity who, when all other way of recovering their honour was closed to them, washed away their stains in the blood of their adulterous wives. Petrus Erodus [Citation], after he has discussed a matter of this kind according to the usual practice of Roman Law, adds in the end: "For as all hope of a second marriage is gone so long as the adulteress still lives, we judge that such very just anger is allayed with more difficulty, unless it be by the flight of time;" and therefore such a case, when not terminated by divorce, is usually terminated by murder. For as Augustine says, "what is not permitted, becomes as if it were permitted; that is, let the adulteress be killed, that the husband may be released."

I acknowledge that it is laudable to restrain the audacity of husbands, lest they declare the law for themselves in their own cause; since they may be mistaken. But it would be more

laudable indeed to restrain the lust of wives; for if they would act modestly and would live honourably they would not force their husbands to this kind of crime, which I may almost call necessary. Nor can we deny that by the ignominy brought upon them by the adultery they are exasperated and are driven insane, and a most just sense of anger is excited in their hearts. For this grievance surpasses all others beyond comparison, and hence is worthy of the greater pity, according to the words of the satirist [*Juv.* x. 314]: "This wrath exacts more than any law concedes to wrath."

Papinianus also well acknowledges this [Citation], where we read: "Since it is very difficult to restrain just anger." For these reasons, authorities hold that a just grievance should render the penalty more lenient even in premediated crimes; because the sense of "just grievance does not easily quiet down, or lose its strength with the flight of time, but the heart is continually pierced by infamy, and the longer the insult endures, the longer endures the infamy, yea, and it is increased." [Citations.]

And this drives one on the more intensely, because with greater impunity, as I may say, wives pollute their own matrimony and destroy the honour of their entire household. In ancient times, while the *Lex Julia* was in force, wives who polluted their marriage-bed underwent the death penalty. [Citations.]

Likewise it was so ordained in the Holy Scriptures; for adulterous wives were stoned to death, Gen. 38; Lev. 20, 10; Deut. 23, 22; Ez. 16.

The solace drawn from the public vengeance quieted the anger and destroyed the infamy. Then the husband, who was restored to his original freedom, could take a new and honest wife and raise his sons in honour. But now, in our evil days, there is a deplorable frequency of crime everywhere, as the rigour of the Sacred Law has become obsolete. And since wives who live basely are dealt with very mildly, the husband's condition would indeed be most unfortunate if either he must live perpetually in infamy, or must expiate her destruction, when she is slain, by the death penalty, as Matthæus well considers. [Citation.]

Therefore, when it is claimed that the husband shall escape entirely unpunished, it is necessary that the wife be killed in the very act of discovered sin. But when the question is as to whether or not a husband may be punished more mildly than usual when driven to wife-murder for honour's sake, it makes no

difference whether he kill her immediately or after an interval. [Citation.]

Nor does this opinion lack foundation in the very Civil Law of the Romans, for Martian [Citation] asserts that a father who had killed his son while out hunting, because he had polluted his stepmother with adultery, was exiled. Nor had the father found him in the very act of crime, but slew him while out hunting, that is with a pretence of friendliness and by dissimulating his injury. Accordingly he was punished, but not with the usual penalty; for he had killed his son, not in his right as a father, but in the manner of a robber. Hence we can infer that not the killing, but the method of killing was punishable, as we may deduce from Bartolo. [Citations.]

Still further, it is well worthy of consideration that one may kill an adversary with impunity, for the sake of his personal safety, but he must do so immediately and in the very act of aggression, and not after an interval. For the life of one slain may not be recovered by the slaying of the murderer. Accordingly, whatever violence may follow upon the first murder becomes vengeance, which is hateful and odious to the law; for the jurisdiction of the judge is insulted by depriving him of the power of publicly avenging murder. But if by the death of the slayer the one slain could be called back to life, I think there is no doubt that any one could kill the said slayer; for then such an act would not be revenge, but due defence, leading toward the recovery of the life that had been lost. But even when we are dealing with an offence and injury which does not affect the person of the one injured, it is likewise permitted that one who has been robbed may, even after an interval, kill the thief for the recovery of the stolen goods, provided every other way to recover them is precluded. Likewise, one offended in his reputation should be permitted at all times to kill the one injuring him; for such an act may be termed, not the avenging of an injury, but the re-establishing of wounded honour, which could be healed in no other way. [Citations.]

Furthermore, as I have said, when one is discussing the subject of self-defence, he is dealing with an instantaneous act; hence the anger conceived therefrom ought to quiet down after a while, according to the warning of St. Paul, Eph. 4: "Let not the sun go down upon your wrath." But when we are dealing with an offence that injures the honour, this is not merely a momentary matter, but is protracted, and indeed with the lapse of time becomes the greater, as the injured one

is vilified the more. Therefore, whensoever the murder follows it is always said to have been committed immediately. [Citation.]

Relying upon these and other reasons, most authorities affirm that a husband killing his adulterous wife after an interval, but not found in licentiousness, is to be punished indeed, but more mildly and with a penalty out of the ordinary. [Citations.]

Caball testifies that this has been the practice in many of the world's tribunals. Calvinus gives other cases so decided. [Citation.] And Cyriacus, who speaks in worse circumstances, adduces numerous other cases, and the authorities recently cited offer many more.

This lenient opinion is the more readily to be accepted because, as I claim, the deed about which we are arguing does not also carry with it (as the Fisc holds) attendant circumstances demanding such a rigorous penalty.

[First] the taking of helpers to be present at the murders [is not such a circumstance]; because he could lawfully use the help of companions to provide more safely for his own honour by the death of his wife. [Citations.]

[Secondly] the crime is not raised to a higher class because he led with him helpers at a price agreed upon; for what is more, and is far more to be wondered at, a husband can lawfully demand of others the murder of an adulterous wife, even by means of money, as the following indisputably affirm. [Citations.]

Likewise it does not at all disturb [our line of argument] that Count Guido might have killed his wife and the adulterer when they were caught in the very act of flight at the tavern of Castelnuovo, but that he preferred rather to have them imprisoned, seeking their punishment by law, and not with his own hand. We deny that he could have safely killed both of them, inasmuch as he was alone, nor could he attack them, except at the risk of his own life. Because the lover was of powerful strength, not at all timid, and all too prompt for resisting, since, in the word of one of the witnesses in the prosecution for flight, he was called *Scapezzacollo* [cut-throat]. Nor is it credible that, unless he had been fearless and full of spirit, he would have ventured upon so great a crime, and would have dared to participate in her flight, and to accompany the fugitive wife from the home of her husband. And this fact is more clearly deducible from one of his letters, in which, after urging Francesca to mingle an opiate in the wine-flasks for the purpose

of putting her husband and the servants to sleep, he adds that if they find it out she should open the door; for he would either suffer death with her or would snatch her from their hands. These things indicate both courage and audacity. And though the wife is a woman, that is a timid and unwarlike creature, nevertheless Francesca was all too impudent and audacious, whether because of her hatred for her husband or on account of her anger at the imprisonment of her lover. For she drew a sword upon her husband in the very presence of the officers who were about to arrest her. And to prevent her from going further, one of the bystanders had to snatch it from her hands. Therefore, before their imprisonment, Guido could not put into effect what he had had in mind and what he could lawfully do, because he was alone and his strength was not sufficient. Then when she had been taken to prison, and afterwards was placed in safe keeping, it was impossible for him to vindicate his honour. But when at last she had left the monastery and had gone back to the home of Pietro and Violante, he took vengeance as soon as he could. Therefore we hold that he killed her in the very act, as it were, and immediately. In Sanfelicius [Citation], we read of a case where a husband, though he could have killed his wife immediately, did not do so, but craftily redeemed himself from his disgrace by slaying his wife as soon as possible. And Giurba also speaks of a case where the argument is concerning an injury that was not personal, but real, as was said above.

Guido saw to her capture, and insisted that she be punished, lest she continue her adultery and viciousness, being powerless to do anything else, because his confusion of mind, his helpless fury, and his sense of shame led him unwisely into not taking the law into his own hands and recovering his lost honour. He indeed lodged complaint, but it was because he could not kill her. Nor would his ignominy have been wiped out nor his infamy have been destroyed by her imprisonment and punishment. But when, indeed, after her imprisonment he was still more shut out from noble company, his injury ever became the more acute, and it stimulated him the more strongly to regain his own reputation. But his bitterness of mind was increased especially at hearing that she had gone back to the home of Pietro and Violante, who had declared that she was not their daughter, but the child of a dishonest woman; hence his injury was increased by her staying in a home which he suspected, as is said a little further on. Accordingly the same cause kept urging him after her departure from the monastery, as had done

so before her imprisonment and the appeals made by Count Guido.

It makes very little difference that Francesca was staying in the home of Violante, which had been assigned to her as a safe prison with the consent of Guido's brother. For what would it amount to even if with the consent of Guido himself she had been taken from the monastery (yet we have no word of this matter in the trial). For Guido could make that pretence to gain the opportunity of killing her for the restoration of his honour. Nor would such dissimulation increase the crime, especially to the degree of the ordinary penalty, since it is certain that the husband may kill a wife stained with adultery without incurring such penalty. Yet a heavier or lighter penalty is inflicted, just as more or less treachery accompanies the murder, as Matthæus testifies it was practised in the Senate of Matrinumsis. [Citation.]

Nor is the attendant circumstance of the place assigned as a prison worthy of consideration, as if the custody of the Prince had been insulted; for one is not said to be in custody when he is merely detained in a place under security that he will not leave it. [Citation.] Furthermore, this objection falls utterly to the ground, because the circumstance of such a place does not increase the crime, whenever it is committed by one having provocation or for the repelling of an injury. And [the following authorities] hold thus in the more serious case of a crime committed in prison. [Citations].

Furthermore we do not believe, from what is said above, that the penalty can be increased because of the murder of Pietro and Violante, since the same injured honour, which impelled Count Guido to kill his wife, forced him to kill the said parents. And now may the ashes of the dead spare me if what I have urged above, and what I am about to say, may seem to disturb their peace! Neither the flame of hatred nor the impulse of anger (which are far from me) have suggested these charges; but the demands of the defence, which I have assumed without a penny of compensation, compel me to employ every means leading to the desired end.

I have said, and I think not without due reason, that the Accused sprang forward to the death of both of them, moved simply by an immediate injury to his own reputation. For a few months after the marriage contracted with Francesca, whom they had professed to be their daughter, they had not blushed to declare that she was not such. Hence there is an

inevitable dilemma. Either [*first*] she was in deed and truth their daughter, and then we must acknowledge that in afterward denying her parentage they had inflicted the greatest injury upon the honour and reputation of the Accused; for they had conceived strong hatred and malice against him. Hence they did not hesitate to disgrace their own daughter, in order that they might bring upon him the infamy of having married the daughter of a vile and dishonest woman. This is indeed a fact, that whoever knows Count Guido supposes he has married a girl, not merely of rank unequal to his own, but even of the basest condition, and this greatly injures the reputation of his entire household.

Or else [*second*] Francesca was indeed conceived of an unknown father and born of a dishonest harlot. And it cannot be denied, that in that case he suffered even greater injury, which branded him with a mark of infamy; both because of her birth and from the fact that daughters are usually not unlike their mothers. Cephalus [Citations], where we read: "From such mingling with harlots it is to be supposed that the people become degenerate, ignoble, and burning with lust." And would that experience had not taught us this fact!

The unfortunate man believed he was marrying the daughter of Pietro and Violante, born legitimately, and yet by the contrivance and trickery of this couple he married a girl of basest stock, conceived illegitimately by a dishonourable mother. From this fact alone the quality of those parents can be inferred, who, for the sake of deceiving those lawfully entitled to the trust-moneys, had made most vile pretence of the birth of a child, entirely unmindful that they laid themselves liable to capital punishment. [Citations.]

It will not, therefore, be difficult to believe what Francesca reveals in her letter to her brother-in-law, that the abovesaid couple, in spite of the fact that she was well treated, kept instigating her daily to poison her husband, her brother-in-law, and her mother-in-law, and to burn the home. And though these crimes are very base, they gave her still worse counsel, even by her obligation to obey them; namely, that after their departure from Arezzo, she should allure a lover, and leaving her husband's home in his company, should return to the City. In her obedience to their commands, this daughter seemed indeed all too prompt. Who then will deny that such reckless daring, wherefrom a notorious disgrace was inflicted upon the entire household of the Accused, ought to be attributed to the base persuasion of

the said couple? Nor was it difficult to persuade that girl to do what she was prone to by inborn instinct and by the example of her mother.

It is not my duty to divine why that couple so anxiously desired the return of Francesca to their home. But I cannot persuade myself that they were moved by mere charity, namely, that she might escape ill-treatment. For Francesca, in the said letter, acknowledges that she is leading a quiet life, and that her husband and the servants are treating her very well, and that what she had laid before the Bishop had been the falsehood of the said couple.

I know furthermore that if a husband have knowledge of the adultery of his wife and keep her in his home, he cannot escape the mark and penalty of a pimp. [Citations.] If, therefore, as the said couple declare, Francesca was not their daughter, why did they receive her so tenderly into their home after her adultery was plainly manifest? Why did they, as I may say, cherish her in their breasts, not merely up till the birth of her child, but even till death? And I wish I could say that her love affairs with the banished [priest] were not continued there! For at his mere name, after the knocking at the door, as soon as they heard that some one was about to give them a letter from the one in banishment, immediately the door was opened and Guido was given an entry for recovering his honour. If, indeed, the said couple had been displeased with the adultery of Francesca, they would, without doubt, have shuddered at the name of the adulterer, and would have cut off every way for mutual correspondence. Therefore it is most clearly evident that the cause of wounded honour in the Accused had continued, and indeed new causes of the same kind had arisen, all of which tended toward blackening his reputation.

Nor does it make any difference that the Accused may have had in mind several causes of hatred toward both Francesca and the Comparini. For if these are well weighed, they all coincide with, and are reduced to, the original cause, namely, that of wounded honour. However that may be, when causes are compatible with one another, the act that follows should always be attributed to the stronger and more urgent and more acute. [Citations.] And on the point that when several causes concur, murder is to be referred and attributed to injured honour, and not to the others: [Citations.]

Therefore I think that any wise man ought to acknowledge that Guido had most just cause for killing the said couple, and

that very just anger had been excited against them. This was increased day by day by the perfectly human consideration that he would not have married her unless he had been deceived by that very tricky couple. And to what is said above we may add that either the child born [of Pompilia] was conceived in adultery, as the Accused could well believe, since he was ignorant of the fact that his wife was pregnant during her flight; and then we cannot deny that new offence was given to his honour, or the old one was renewed, by the said birth; or the child was born of his legitimate father; and who will deny that by the hiding of the child, Guido ought to be angered anew over the loss of his son? And the great indignation conceived from either cause (the force of which is very powerful) is so deserving of excuse that very many atrocious crimes committed upon the impulse of just anger have gone entirely unpunished. [Citations.] The following text [Citation] agrees with this, "Nevertheless, because night and just anger ameliorate his deed, he can be sent into exile." [Citations.]

And not infrequently, in the contingency of such a deed, men have escaped entirely unpunished, who, when moved by just anger, have laid hands even upon the innocent. For a certain Smyrnean woman had killed her husband and her son conceived of him, because her husband had slain her own son by her first marriage. When she was accused before Dolabella, as Proconsul, he was unwilling either to liberate one who was stained with two murders, or to condemn her, as she had been moved by just anger. He therefore sent her to the Areopagus, that assembly of very wise judges. There, when the cause had been made known, response was given that she and her accuser should come back after a hundred years. And so the defendant in a double murder, although she had also killed one who was innocent, escaped entirely unpunished. [Citation.]

Likewise, a wife who had given command for the murder of her husband because of just anger from his denial of her matrimonial dues was punished with a fine, and a temporary residence in a monastery, as Cyriacus testifies. [Citation.] Such pleas might indeed hold good whenever the accused had confessed the crime, or had been lawfully convicted, neither of which can be affirmed [in our case]. But much more are they to be admitted, since he confesses only that he gave order for striking his wife's face, or for mutilating it; and if those he commanded exceeded his order, he should not be held responsible for their excess. [Citations.]

His fellows and companions give his name, and claim that he

had a hand in the murders. And in spite of the fact that the Fisc claims they have hidden the truth in many respects, equity will not allow that certain matters be separated from their depositions and that these be accepted only in part; for if they are false in one matter, such are they to be considered in all. It would be more than enough to take away from those depositions all credence that, under torture in his presence, they did not purge that stain. [Citations.]

It has very justly been permitted that in defence of this noble man, I should deduce these matters, as they say, with galloping pen. The scantiness of the time has not suffered me to bring together other grounds for my case; these could be gathered with little labour, and possibly not without utility. Yet I believe that all objections, which can be raised on the part of the Fisc, have been abundantly satisfied.

GIACINTO ARCANGELI, *Procurator of the Poor.*

[File-title of Pamphlet 2.]

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*By the Most Illustrious and Most Reverend Lord Governor in Criminal Cases:*

# *ROMAN MURDER-CASE*

*On Behalf of Count Guido Franceschini and his Associates, Prisoners, against the Court and the Fisc.*

*Memorial of law by the Honourable Advocate of the Poor.*

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*At Rome, in the type of the Reverend Apostolic Chamber,*
1698.

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# ROMANA HOMICIDIORUM

[Pamphlet 2.]

Most Illustrious and Most Reverend Lord Governor:

From the " prosecution [for flight]," which was brought in this very tribunal, and by his honour, Lord Venturini, Judge in this present case, there is more than satisfactory proof of adultery committed by Francesca Pompilia, wife of Count Guido Franceschini, a nobleman of Arezzo, with the Canon Caponsacchi. With Caponsacchi the parents of this same Francesca Pompilia entered into conspiracy, although they were living here in the City. And after she had given an opiate to Count Guido and his entire household, she fled that same night from the City of Arezzo toward Rome.

Consequently, the Canon, as may be remembered, was banished to Civita Vecchia, with a statement of his criminal knowledge of that woman in the said decree of condemnation. This adultery is also evident from other matters of evidence deduced by the Procurator of the Poor. There remains, accordingly, no room to doubt it, but rather their adultery may be said to be notorious here in the City, in the country of Count Guido, and throughout all Etruria.

Since this is established, we can safely assert that even if Guido had confessed that he slew his wife with the complicity and help of Blasio Agostinelli of the town of Popolo, Domenico Gambassini of Florence, Francesco Pasquini of the castle of Monte Acuto, and Alessandro Baldeschi of Tiferno, he should not therefore be punished with the ordinary death penalty, but more mildly. This is in accord with the decision of Emperor Pius as related by Ulpian [Citation] and by Martian. [Citation.] For in both of them it is said that a man of low birth is sent into perpetual exile, but that a noble is banished only for a limited time, but the crime of a husband who is moved by just anger is overlooked, as this same Ulpian confirms [Citation], since it is most difficult to restrain such anger. [Citation.]

Yet we should not consider it necessary that the adultery of the wife be conclusively proved (as it really is) in order that there be room for mitigating the said penalty. For it would be

enough, if we were dealing with a case of mere suspicion: Glossa, etc. "A man who had killed his son because he believed the young man had lain with his stepmother, as was true, was deported to an island." [Citations.]

Dondeus also speaks of a man who had boasted that he wished to ruin the sister of the one who killed him, which is said to have aroused just suspicion and fear for the loss of honour sufficient to free the slayer from the ordinary penalty of murder. [Citations.]

Nor is it true, as some authorities affirm, that the husband must take the wife in very adultery, and kill her immediately in which case, they say the abovesaid laws hold good, but that it is otherwise if the murder is done after an interval. [Citations.] For the contrary opinion is the truer, the more usual, and the one to be observed in practice, as Marsilius well advises, where he speaks in defence of a certain nobleman who had killed another person after an interval. The man slain had betrothed his sister by promise and had kept her for three months, and had then rejected her. Because of this, a great injury and much infamy were inflicted upon his family and the entire kin. Marsilius then adduces the abovesaid laws, which pronounce concerning a husband who kills his adulterous wife and Bertazzolus offers the case of one who had killed his adulterous wife and had afterward, in his own defence, proved the adultery by the double confession of the same wife. Claudius Jr. testifies that the murderer was banished for a time by the prætor of Mirandola, and after the lapse of several months he was recalled by the Duke of Mirandola. [Citations.]

Afflitto cites the decree of the Kingdom, beginning *Si Maritus*, which concedes impunity to a husband who kills his wife and the adulterer both, in the very act of adultery, and without any delay. He then says that if both of these requisites are not present, the husband is excused in part, but not entirely; and so is punished more mildly. And in No. 2 he gives the reason because whenever one commits a crime, under impulse of just anger, the penalty should be somewhat moderated, according to the aforesaid text. [Citations.]

Matthæus [Citation] adduces the excellent words of Theodoric as quoted by Cassiodorus [Citation], where we read: "For who can bear to drag into court a man who has attempted to violate his matrimonial rights? It is deep-seated even in beasts that they should defend their mating even with deadly conflict, since what is condemned by natural law is hateful to all living creatures. We see bulls defending their cows by strife of horns

rams fighting with their heads for their wethers, horses vindicating by kicks and bites their females; so even these, who are moved by no sense of shame, lay down their lives for their mates. How then may a man endure to leave adultery unavenged, which is known to have been committed to his eternal disgrace? And so if you have made very little false satements in the petition you offer, and if you have indeed only washed away the stain to your marriage-bed by the blood of the adulterer, taken in the act, and if you are looking back from your exile, which was evidently inflicted not by reason of a bloodthirsty mind, but because of your sense of shame, we bid you return from your exile; since for a husband to use the sword for the love of his sense of honour is not to overthrow the laws, but to establish them."

Dondeus says this interpretation is clearly proved by the authority of a glossa in the chapter: *Ex litterarum.* [Citation.] For in the text, when these words are used: "your wife taken in adultery," a glossa explains the word "taken" as equal to "convicted." Marta says this opinion is much more just and equitable, and is commonly held. And Muta (*dec. Siciliæ* 61) in the end offers a decision of the supreme court of the kingdom, by which a husband was condemned to the galleys for seven years. This was on account of the accompanying circumstances; for he had had his wife summoned outside of the city walls by his son, and there had killed her; and afterward her body was found to have been devoured by dogs. Dexartus testifies that it was thus decided in Sacred Royal Court, in condemning a husband only to exile. Sanfelix also tells us that certain noble young men, who had killed their wives, after an interval, because of strong suspicion of adultery, were absolved by the Royal Council of Naples, in view of the quality of the persons concerned. In their favour, authorities of the highest rank had written, whose allegations this same author places under the said decision. And although some of these young men were condemned to the oars, he said that this punishment had been imposed because of the mutilation of the privates which followed; because those who do such things are considered enemies to nature. (*Panimoll. dec.* 86.) And Caldero, although in the preceding numbers he inclined toward an opinion contrary to ours, came over to our side when he saw that Matthæus held that opinion.

And the reason is very evident, for whenever such an injury is suffered by fine natures, especially among the noble class, it

is ever present with them, and continually oppresses the heart, and urges it on to vengeance for the recovery of lost honour, as Giurba well notes. [Citations.]

For this reason, it has always and everywhere been held in case of murder committed for honour's sake that there is no place for the ordinary death penalty, which should be mitigated at the discretion of the judge. And this rule has been followed when the murder was committed after an interval, and even after a long interval. For the abovesaid reason, both Grammaticus and Gizzarellus affirm and hand down this opinion. The latter says that it has always been so adjudged by the Sacred Council of Naples, and that this opinion has always been accepted by our ancestors. [Citations.]

It was so judged by the high court of the Vicar, although it was dealing with a murder committed after two years, and by craft, by two brothers upon the adulteress in the presence of her sister's cousin. Cyriacus also speaks of the murder of a husband by his wife, because he was keeping a mistress and was contriving against her honour; and there he said that since just anger has a long continuance, because of its extreme bitterness, vengeance should always be said to follow immediately. [Citation.]

Another reason also is at hand, which is considered by the authorities, namely, that an injury, whereby the honour is hurt is not personal, but real, and therefore can be resented at any time whatsoever, even after the lapse of a very long time, as Giurba holds in our circumstances. [Citations.]

We have therefore a great many standard authorities who affirm, for most vital reasons, that murder committed, even after an interval, upon the person of the wife or of any one else, for honour's sake, ought not to be punished with the ordinary death penalty, but more mildly. Furthermore, these authorities bear witness that the matter has been so judged in the tribunals with which they are acquainted. No attention therefore should be paid to the opposite opinion held by Farinacci [Citation]; for we plainly see that he speaks contrary to the common and usually accepted opinion in tribunals. [Citation.]

Still further it should be noted that the same author in *con.* 66, *num.* 5, holds the very opposite, basing his opinion especially upon a text in the law of Emperor Hadrian [Citation], where a father had killed his son, who was not found in the act with his stepmother, but while out hunting and in the woods, that is after an interval. And he was punished not with the death penalty, but by deportation. Several of the above-cited

authorities offer the decision of this text likewise in corroboration of this opinion of ours. Our point is also proved by the fact that this same author in *quaest.* 121 is rather doubtful; and there he acknowledges that for this opinion of ours the reason given above is very strong, namely, that "injured honour" and "just anger" always oppress the heart. And so he says in such a case one should note the sense of the text in the law *Non puto* [Citation], where Modestinus, Doctor of Law, says that he thinks that one would not make a mistake who in doubtful cases should readily give this response against the Fisc; and Farinacci cites him so speaking.

But one should be on his guard against what this same Farinacci asserts: namely, that this opinion of his, so far as he could see, was the one more approved by the Sacred Court. For since this point of doubt, as he himself confesses, had not then been advanced, he could not judge what would be the outcome if it had been proposed. And indeed the wisest of the said high authorities do not give their assent to his opinion, but rather hold the contrary, which is favourable to ourselves, as is seen in the decisions they have given from time to time. For it was so held on March 25, 1672, in the case of Carolo Falerno, who was condemned to an unusual penalty for the murder of Francesco Domenici; for he had found him coming out of a church, to which he had warned him not to go, as he was suspicious that the one slain was following his wife. In like manner with Carolo Matarazzi, August 15, 1673, who killed his wife on the foolish grounds that he suspected her of illegitimate conception because of the absence of her menses; but this suspicion did not indeed correspond with the truth. And in law a matter may be even more mistaken and less observed by human intellect. [Citations.]

Likewise in a murder committed treacherously with an arquebus upon the person of Tomaso Bovini by Francesco Mattucio of Monte San Giovanni, a person of the very lowest class, merely because of the attempted dishonour of his sister. The attempt of the one killed was proved by two witnesses on hearsay of the one slain. On September 4, 1692, the penalty of life sentence to the galleys, to which the said Mattucio had been convicted on strongest proofs on the preceding July 12, was moderated by the sacred court, before the Right Reverend Father Ratta, of blessed memory. With good right, therefore, this same Farinacci is expressly confuted and overthrown by Matthæus. [Citations.]

This opinion of ours is to be accepted the more readily when we consider that the husband is more stirred by the adultery of his wife than by the murder of his son. [Citations.] Yes, and even more than by the defilement of his daughter. [Citation.] So that if a husband does not complain of the adultery of his wife, he is considered a pimp, as Paschal holds, where we read recently: "Adultery of the wife gives offence not merely to the husband, but blackens and stains the entire kin." [Citations.] That this happened in the present case is plainly evident; for Abate Paolo, brother of Guido, was compelled not only to leave the City, in which he had lived for many years with highest praise, but even to pass out of Italy, because he was pursued undoubtedly by the greatest disgrace on account of this adultery. While he was carrying on Guido's cause in the courts, he moved the laughter and sneers of almost all sensible and wise men, not to say of the very judges themselves, as usually happens in these circumstances. [Citations.]

Nor would it stand in the way of what we have said above, if without prejudice to the truth, we should admit (as the Fisc claims) that Count Guido killed his wife with the complicity and aid of the said Blasio, Domenico, Francesco, and Alessandro, assembled for that purpose; for he could do that in order to take vengeance upon her more easily and more safely. [Citations.]

[Nor would it stand in our way if we admitted] that he had assembled the said men by means of money. [Citations.]

Nor does this plea of injured honour cease with regard to the murders of the said father-in-law and mother-in-law; for since their conspiracy in the adultery of their daughter is established, they themselves were among the causes of the injury and ignominy which resulted therefrom to the prejudice of the honour and reputation of Count Guido, their son-in-law, and her husband respectively. Therefore, these murders likewise ought to be punished with the same penalty as the principal, according to texts in the law *Qui domum*. [Citations.] And so they gave cause enough to Count Guido to take vengeance on them.

It is to be added, furthermore (as will be proved indeed, and as Count Guido himself has asserted in his testimony), that they themselves did another injury to his reputation by means of the civil suit which they brought on the grounds of the pretended birth of Francesca Pompilia; and not merely here in the City, but also in his own country, they distributed the most bitter libels, which were added to this same lawsuit. Hence it cannot be denied that Count Guido for this reason had conceived a

just anger and provocation, and that he had just cause for taking vengeance. This is according to the text [Citation], where Alexander the Third wrote to the Bishop of Tournay that a certain woman who had killed her child should be placed in a monastery, because she was reproached by her husband with the accusation that it had been conceived in adultery. For in crimes where anger does not entirely excuse, still the delinquent who kills in anger conceived from just grievance is somewhat excused. [Citation.]

And this is true in spite of the fact that the Fisc may claim that the penalty given in the Constitution of Alexander has been incurred. For in the present case the crime cannot be said to have been committed on account of hatred aroused by the lawsuit; for in that suit Count Guido had gained a favourable sentence from Judge Tomati, which was sanctioned by the Supreme Tribunal of Justice. But the crime was committed indeed because of his just indignation. And this arose, first, from the ignominy growing out of the said pretence as to her birth; second, from the provocation given by the Comparini (now slain) in issuing and distributing the said papers; and, third, from their conspiracy in the flight of his wife. For indeed this Constitution of Alexander does not apply where no guile is present and where some provocation has been given by the one hurt. Farinacci very fully affirms this throughout *cons.* 67, where in the end he places the complete decision of the Sacred Court.

In any case, since with Count Guido two causes for committing crime concurred: one the aforesaid matter of the lawsuit, another wounded honour because of the lawsuit brought and the flight in which they conspired, wherefrom the adultery had followed, the cause of honour should be given attention, as it is the graver and consequently the more proportionate to the crime. [Citations.]

Likewise the penalty should not be increased in view of the place of the crime, because the defence of one's honour is so justifiable, and the anger and commotion of mind arising therefrom is so just, that reason for it cannot be demanded, as Merlin Pignatelli [Citation] holds, because Giovanni Francesco de Carrillo [Citation] speaks of an insult offered in prison. And No. 29 approves the decision for the reason that greater reverence is due to churches and other places consecrated to God, and in which the King of Kings and Lord of Lords dwells in essence; and yet one who commits crime in them from just anger

and grievance is excused; for he asserts that all Canonists and other authorities there alleged by him unanimously acknowledge this.

More readily, therefore, should this conclusion follow in our case, since the said Francesca was not staying in a formal prison, but was merely keeping her home as a prison, under security of 300 scudi, that she would not depart therefrom; because one who has given bond and has sworn not to leave a place is neither in chains nor in custody. [Citations.]

Lucano holds that there are differences between being kept in chains and being committed under bond, etc. And Farinacci holds that the word "custody" should be more strictly interpreted than the word "chains." [Citations.]

Even if, therefore, Count Guido had confessed that he killed his own wife, his father-in-law, and his mother-in-law, with the complicity and aid of the above-named helpers, he should not be punished with the ordinary penalty, for reasons given above. And much more readily should we follow this opinion since we can see that he confessed only that he gave commands for mutilating his said wife (*ad sfrisiandum*), if I may use the word of the authorities. In this case he is not to be held responsible for the subsequent death of his wife and of the others. Decian, *cons.* 622, *no.* 4, in this very condition, holds that one giving orders can be punished only for the manner of committing the crime for which bodily punishment cannot be inflicted.

Thus far the Fisc has been unwilling to rest satisfied with such a qualified confession. Yet since he claims the right to torture the accused for proving some further pretended truth, the torture shall be simple; nor can the torment of the vigil be inflicted; because the Constitution given out by Pope Paul Fifth, of sacred memory, for the reformation of the courts of the City, stands in the way of that. This is included among his Constitutions as the 71st. By this it was decreed that such torment could not be inflicted unless these two features jointly concur: namely, that the crime be very atrocious and that the accused be burdened with the strongest proofs. [Citations.]

But a crime is said to be "very atrocious" provided it is one for which a penalty more severe than mere death should be inflicted, such as useless mutilation, burning, and the like. *Farinaccius qu.* 18, *num.* 68, etc. And such a death, as ignominious and infamous, has no place with the persons of nobles. [Citations.]

Hence it is much less so here, because we are not arguing about

the death penalty even, which does not enter into the present case for reasons given above. And Gabriellus speaks to this effect on the point that such a crime may not be said to be qualified.

What has been said in favour of Guido, the principal, also stands in favour of the aforesaid Blasio, Domenico, Francesco, and Alessandro; because they cannot be punished with the ordinary penalty, but only with the same penalty as the principal. [Citation.] Baldo cites a case under the statute which shows that one under bann for a certain crime cannot be killed save by the enemy who had him put under bann; and he says that if the enemy has him assassinated, the assassin is not punished. And he gives this reason, that what is permissible in the person of the one giving the order should be held as permissible in the one to whom orders are given; and he says it had been so held in a case under that law. Castro [Citation] holds that when one is permitted under the statute to take vengeance upon a person who has given him offence, he is also permitted to assemble his friends, to afford him aid, and that they shall go unpunished, just as the principal does. He also asserts that Jacobus Butrigarus [Citation], held thus, in *cons.* 277, where he speaks of the case of a husband who had assembled men to beat one who had wished to shame the modesty of his wife, he ordered his wife to pretend to give ear, and when the intriguer had come, murder was committed. And he says that men brought together in this way should be spared, because such an assembly was permissible for the husband, who was principal. [Citation.] Jason holds that in any vengeance permitted by law, one cannot demand it of another; yet he to whom it is permitted may take fellows and accomplices with him for the same act, and if they kill in company with him they shall not be held to account for the murder nor for the aid they have given; and he says that this opinion should be much kept in mind. Cæpollinus also illustrates this in several cases, especially in that of certain men who had killed one keeping the company of the sister of the man who had assembled them; and he says that they should not be punished, just as the principal was not, and he gained his point so that it was thus adjudged. [Citations.]

Soccini also holds it should be thus adjudged, unless one wishes to say that they should be punished with a slighter penalty than the principal, as often happens in the case of auxiliaries. And he speaks in our very circumstances of men assembled by a husband for the sake of killing one who had polluted his wife.

In these same circumstances, see also Parisius. [Citation.] Carera [Citation] speaks of a father who had his daughter (who had been keeping bad company) killed by an assassin; and he says that neither the father nor the murderer are to be held to account. [Citation.]

Marsilius also, after placing in the very beginning this principle that when one matter is conceded all seem to be conceded which lead thereto, draws inference therefrom for the present case and many reasons for it are adduced. Cassanis also [Citation] holds that men assembled in this way are not held responsible either for the murder or for the aid furnished, if they do the killing in the company of the principal. And in these same circumstances Garzonus speaks, decision 71, throughout.

Nor does it stand in the way of our reasoning that one of the aforesaid defendants had inflicted wounds with his own hands, or had killed one of the victims; as Francesco has confessed that he inflicted four or five wounds in the back of Francesca Pompilia. Even in these circumstances the rule holds good that auxiliaries shall not be punished with greater penalty than the principal. And so affirm individually the following authorities among those recently cited. [Citations.]

And Garzoni testifies that it was so adjudged in the said decision 71, where we read: "Or he may have with himself associates for this act," and if they kill the adulterers in company of the principal they are held to very slight account, either for the murder or for the aid given, and it was so adjudged.

And even in the more extreme case of one killing by assassination, and consequently in the absence of the principal, this is the opinion of Baldo [Citation], where we read: "And now it is inquired whether an assassin is ever punished, and I say he is not; because what is permitted in the person giving command is also permitted in the person commanded." Castro [Citation] also says: "Because what I can do of myself I can have done through my helpers who are necessary for that purpose." And Afflitto [Citation] says: "Either with one's own hands, or by help of another, even with the influence of money, and thus by an assassin; for Baldo says on this same point: 'What is permitted in the person giving command is also permitted in the person commanded'; and he witnesses that it was so adjudged." [Citations.] Marta [speaks as follows]: "Much more so because authorities affirm that a husband, who on account of fear cannot kill the adulteress, may even by the help

of money demand of another that he kill her, and neither of them is then to be punished."

But whatever Caballus [Citation] may say to the contrary, he bases his opinion upon Castro and Rollandus. Castro, however, favours our opinion, as is to be seen in No. 3. Rollandus should not be given heed; for when he offers this very same opinion about the statute which permits any one to take vengeance; and says that since this kind of permission is personal, it cannot be passed on from one to another, this opinion of his is expressly contrary to the teaching of Baldo, Castro, Jason, and others, whom we have alleged above in paragraph *quae dicta sunt.* And since this opinion of ours is milder and more equitable, it should hold good, as Jason decides on this point. [Citation.]

Nor can the punishment be increased because of the alleged carrying of prohibited arms; because the latter offence is included then with the real crime. [Citations.] In Guazzin we read that this is so, even if for the carrying of the arms a greater penalty would be inflicted [than for the principal offence]. And so, whenever it is evident that the crime has been committed for honour's sake and for a just grievance, as in the present case, the carrying of the arms may go unpunished, or at least it should not be punished with a more severe penalty than should be imposed for the principal crime itself. Thus Policardus [Citation] well affirms when speaking of arms which are considered treacherous by the Banns.

These claims should hold good more readily as regards Domenico and Francesco, who are foreigners, and are therefore not included in any of the Apostolic Constitutions or Banns, which prohibit the bearing of arms under very heavy penalties. [Citations.]

Especially since they are minors, as is made clear in the course of the trial, pp. 35 and 304; in which case they are likewise not bound by these Constitutions and Banns, which give judgment upon the crime of a minor. For the power to make and establish such regulations was lacking in the Prince or public official concerned. [Citations.]

Such are the matters which, in view of the excessive scantiness of time, I have been able to collect in discharge of my duty for the defence of these poor prisoners. Nor do I at all distrust that my Lords Judges, when they see that too little has been said, will wish to supply and offer what is lacking out of the

high rectitude for which they are distinguished. For this would be quite in accord with the decree of Emperors Diocletian and Maximian, as related. [Citation.] And they will follow the advice of Hippolitus Marsilius, famous in criminal proceedings, who says that a judge is obliged by his office to seek out grounds of defence for the accused. [Citations.]

DESIDERIO SPRETI, *Advocate for the Poor.*

[File-title of Pamphlet 3.]

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*By the Most Illustrious and Most Reverend Lord Governor in Criminal Cases:*

# *ROMAN MURDER-CASE.*

*In behalf of Blasio Agostinelli and his Associates, Prisoners, against the Fisc.*

*Memorial of fact and law.*

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*At Rome, in the type of the Reverend Apostolic Chamber,*
1698.

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# ROMANA HOMICIDIORUM

[Pamphlet 3.]

Most Illustrious and Most Reverend Lord:

The plea of injured honour which redeems Count Guido from the rigorous penalty that should follow for the commission of murders, likewise urges mitigation of the ordinary penalty for Blasio and the associates who had hand in the murder, even though it may be pretended that they were paid thereto. For it is taken for granted that we are dealing with a case far removed from assassination, because of the presence of a person who had real cause for vengeance, as the following authorities think in common. [Citation.]

There has been the strongest controversy among authorities as to whether a father or husband may demand of any one except his son the murder of his daughter or of his adulterous wife. And divided on the two sides of the question, they have contended strongly. [Citation.] Yet the majority are in favour of the affirmative and of the milder sentence; and often, in the event of such a murder, it has evidently been so adjudged. [Citation.]

But since this question lies outside of our line of argument, it would be vain and quite useless labour to take it up, nor is time to be wasted when we are so hard pressed for it. For we are evidently dealing with auxiliaries, assembled for committing homicide, according to the thought of the Fisc. Hence the conditions of a mere "mandatory" are not applicable; because of the immediate presence of the principal in the crime; for when he also lays hand to the crime, those who do likewise are not called mandatories, but auxiliaries and helpers. [Citations.]

Furthermore, just as Guido himself is freed from the death penalty because of the said plea of injured honour, so likewise are his allies and auxiliaries freed, as the following authorities unanimously assert. [Citations.]

Those who are cited in support of the opposite view do not pronounce opinion in our peculiar circumstances, but speak of a husband demanding of another the murder of his adulterous

wife, and not of auxiliaries who do the killing in company with the husband, as in our case. [Citations.]

In such contingency, auxiliaries who give aid to a husband while killing his adulterous wife have always enjoyed the same indulgence as the principal himself; that is, they always escape the capital penalty, and indeed go entirely unpunished. [Citations.]

Nor does the distinction of Caballus make any difference, where he holds that auxiliaries may indeed assist with impunity a husband or a father killing a wife or daughter respectively, in order that these may kill the more safely; but that they cannot lend a hand and actually kill; for in the latter case they are to be held accountable for the murder. Because, for foundation in making such a distinction, he plants his feet upon Paolo de Castro. [Citation.] But this is so far from proving his purpose that it rather turns back on him remarkably to his own injury. For after the latter sets before himself this kind of a difficulty, under No. 2, he adds: "But I hold entirely the contrary: that neither the one who did the killing nor he who made the assembly (as it may be called) are to be held for the murder for the purpose of inflicting the capital penalty."

This is also true in the council of Rollandus a Valle. [Citations.] May that learned authority pardon me; for even if he does attempt to confute Paolo de Castro in the said 154th council, which is in our favour, under the pretext that he speaks contrary to the common opinion, this claim does not suffice in view of the above-cited authorities. And if there were time, I would demonstrate this more clearly.

Furthermore, Rollandus alleges Parisius, *cons.* 154, *lib.* 4. But he could well omit that, because No. 22 proves expressly contrary to him on its very face, where it says: "Under our very conditions was given that excellent decision of Paolo de Castro in the before-cited council. In stronger circumstances (which also include the present case) he concludes that those who knew of, or were present, or were associated with a husband in the act of the said murder, and who furnished him aid, ought not to be punished with a greater penalty than the principal, according to the rule concerning auxiliaries, beside the accurate authority of Marsilius." And he concludes that at the very worst, when the utmost rigour of it is considered, they should not be punished with more than a temporary banishment.

Furthermore, Rollandus in the said council is expressly con-

futed by Facchinus. [Citation.] Nor is this without vital reason. For just as a qualification that modifies a crime in the principal delinquent increases it also for the auxiliaries, whenever they are aware of it, so all sense of equity demands that a qualification that diminishes the penalty for the principal, even though it be unknown to the auxiliaries, shall act in favour of them also. [Citations.] Hence Caballus remains without a stable foundation, and is opposed to the opinion of the many doctors here alleged, who make no distinction between those who simply assist and those taking a hand in the murder; and indeed all of them speak of auxiliaries. Furthermore, it is found that this has often been the judgment, even in the more extreme circumstances of one commanded to a murder, as was said above. And so strong is the plea of injured honour that not only does it extend its protection to mere mandatories, but even to mandatories whose case is modified by the circumstance of assassination. And it causes them to be absolved, as we find that it was so decided. [Citations.]

Hence if both mandatories and assassins are redeemed from the ordinary death penalty, whenever they kill an adulteress at the command of the husband, it necessarily follows that the distinction of Caballus is not a true one, nor is it accepted in practice. For if they are mandatories, we cannot deny that they may kill with their own hands; and nevertheless, not to speak of the other decisions cited above, Clar. [Citation] testifies such a decision favourable to the accused was handed down, contrary to the opinion of Caballus.

If, therefore, Blasio and his fellows are not to be punished with the death penalty for affording aid in the murders, vain is the question whether they can be subjected to the torment of the vigil for the purpose of having the very truth from their own mouths. For this procedure demands two requisites: one that the most urgent proofs stand against the accused, and the other that the crime be very atrocious, according to the prescript of the Bull. [Citations.]

And although the powers of this Tribunal are very great for the dispensing with one of the said requisites, yet I have never seen the said torment of the vigil inflicted unless when there was no doubt that the crime, for which the Fisc was trying to draw confession from the accused, deserved the capital penalty. We cannot believe that the prosecution expects to make a case to this end because of the pretended conventicle; since those

who are assembled are not to be held under the penalty for conventicle, but only the one who assembled them is so held, as Baldo well asserts. [Citations.] Nor in this case can the penalty for the asserted conventicle be made good against Count Guido himself, since the cause for which he assembled the men aids him in evading the penalty; inasmuch as one may assemble his friends and associates for the purpose of regaining his reputation. [Citations.]

For this has been well proved, that whenever any one for just grievance assembles men to avenge his injury, he has not incurred the crime and penalty of conventicle.

And although Farinacci, *quaest* 113, *n.* 55, declares that this holds good provided the vengeance be immediate, but that it is otherwise if the vengeance be after an interval, yet I pray that it be noted that in either case, if it concern vengeance for a personal injury (in which conditions he himself speaks), and therefore when for an injury which wounds the honour, such vengeance is at all times said to be taken immediately. For such an injury always urges and presses, because it should be termed the restoration and reparation of honour (which the one injured in his reputation could not otherwise accomplish), rather than vindication and vengeance, as we believe was satisfactorily proved in our other plea in behalf of Count Guido.

But all further difficulty ceases with this consideration: prosecution can be brought for conventicle, if the men were assembled for an evil end and no other crime followed therefrom; but when, according to the sense of the Fisc, they have been called together for committing murders, and these are really committed, no further action can be taken as regards the prohibited conventicle, but rather for the murders themselves; for the assembling of the men tended to this same effect. [Citations.] And it is for this reason more particularly; because when the beginning and the end of an act are alike illegal, the end is given attention, and not the beginning, as Bartolo teaches us. [Citations.]

It is to be added still further, that the assembling of men is not illegal in itself; indeed it is possible for it at some times to be both permissible and worthy of approval, as in the cases related by Farinacci. But it is illegal because of its evil consequences and the base end for which it is usually made. Hence, as the assembling of men is prohibited, not in itself, but because

of something else, the end ought to be considered rather than what precedes the end.

Nor should the rigorous penalty of death be inflicted at all upon Domenico Gambassini and Francesco Pasquini for the pretended carrying of arms of illegitimate measure; because they are foreigners and had not stayed long enough in the Ecclesiastical State so that their knowledge of this law could be taken for granted. Nor ought it to be inflicted upon the others; for even if the death penalty is threatened by the Constitutions and Banns for the bearing or retention of them; yet since the carrying of this kind of arms is not prohibited for reasons in itself, but because of the pernicious end which follows it, or can follow it; and because this bearing of arms was looking towards the said murders; and because these, although they are not entirely permissible, are not utterly without excuse, the crime of carrying such arms should be included with the end for which they were carried; because the one is implied in the other, nor may the means seem worse than the end. And although, according to the opinion of some persons, the penalty for carrying arms is not to be confused with the crime committed with them, whenever the latter is the graver, yet this seems to be so understood when a crime is committed with them which is entirely illegal and without excuse. But this is not so when the crime is deceased and extenuated, and indeed excused in part, because of the reason for which it was committed.

In any case, the bearing of arms, according to common law, is but a slight crime. [Citations.]

Although by special Constitutions and Banns the penalty has been increased almost to the highest possible point, yet this kind of increase does not change the nature of the crime. And just as in the eyes of the common law, torture is not inflicted for getting the truth from those indicted for the said carrying of arms, in view of the insignificance of the crime, in like manner it cannot be inflicted by the force of Constitutions and Statutes which have increased the penalty. [Citations.]

And this is especially true in the case of the torment of the vigil, which cannot be inflicted for a crime that is not in its very nature most atrocious, but that is held as such, so far as the penalty is concerned, merely by the strength of a decree. This holds good unless indeed the nature of that crime is changed according to the method of proceeding in it. [Citation.]

And we see in the Banns of our Illustrious Lord Governor that

he expressly declared this, when he wished to proceed with the torment of the vigil in cases in which he could not proceed legally; that of a certainty he would not do so. Nor would he indeed have done this, if he could have inflicted such tortures in the case of crimes which are not capital by common law, but are to be expiated with the death penalty by the rigour of the Banns.

GIACINTO ARCANGELI, *Procurator of the Poor.*

[File-title of Pamphlet 4.]

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*By the Most Illustrious and Most Reverend Lord Governor in Criminal Cases:*

# *ROMAN MURDER-CASE*

*with qualifying circumstance.*

*For the Fisc.*

*Summary.*

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*At Rome, in the type of the Reverend Apostolic Chamber,*
1698.

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# SUMMARY

[Pamphlet 4.]

*No.* 1.—*The sworn testimony of a witness as to the poverty of said Count Guido Franceschini and the miseries suffered by the Signori Comparini while they stayed in his home in the city of Arezzo.*

*June* 24, 1694.

Angelica, the daughter of the deceased Pietro and Johanna Battista of Castelluccio, in the Diocese of Arezzo, about 35 years of age, was examined by me on behalf of Pietro Comparini, against any one whomsoever, and put on permanent record; as to which testimony, she took oath to speak the truth, as is seen below.

I tell you in all truth, sir, that while I was staying in Arezzo last January in the home of Signora Maddalena Baldi Albergotti, the chance was offered me to go and serve Signora Beatrice Franceschini and her sons, etc. I decided to do so, and when I had gone to the home of the Signori Franceschini I spoke with the said Signora Beatrice. She drew me aside into a little room and told me that she would take me as a servant, but that I should never have any private dealings with the two old people who were in the house; one of them was Signor Pietro Comparini and the other Signora Violante, his wife. She charged me still further that if either of the two old people chanced to call me into their chamber, I should not go without first asking her permission. On these terms I accepted the service. After I had entered thereupon, I noticed that Signora Violante stayed in her room most of the time, weeping, and though the Comparini were stiff with cold, the room was without fire. Hence I took pity on her, and without the knowledge of Signora Beatrice, I took the coals from my own brazier and carried them to her. But no sooner did I offer them to her than Signora Violante ordered me out of the room, lest Signora Beatrice might take offence that I had done this act of charity. Also, once among the many times, when Signora Beatrice found it out she made me leave the coals in the fireplace and snatched the shovel from my hands,

and threatened me, saying that if she had wished it she herself would have come to bring it; because she did not want me to do any service whatsoever for the said Signori Comparini. And the Comparini could not even speak among themselves, because Signor Guido Franceschini, the Canon Girolamo his brother, and Signora Beatrice, their mother, would stand at one door or another of the apartment and listen to what the said Signori Comparini were saying to one another. This occurred every evening and morning until the said Signor Pietro left the room and the house. And when he returned at night they were unwilling for me to make a light for him on the stairway. And once when Signor Pietro came back home about half-past six in the evening, and I heard him scrape his feet, I took up the lamp to go and meet him. But Signor Guido noticing that, snatched the lamp from my hands, telling me that I had better keep still, and that I had better not approach unless I wished to be pitched out of the window. And this seemed all the worse to me, because when I first entered upon the service of the said Franceschini I had heard it said around the house that one evening, as Signor Pietro was coming back home, he had fallen, while ascending the same steps without a light, and that he had made a very ugly bruise, because of which he had had to keep his bed for many days. At the same time, while I was in the said service, it chanced one morning at breakfast that the Franceschini gave some offence to Signora Violante, because of which a mishap befell her. For no sooner had she reached her own room than she threw herself into a straw-chair and swooned away. When Signora Francesca Pompilia, wife of the said Signor Guido, found it out, she began to weep and to cry out with a loud voice, saying, "My mother is dying." Whereupon I ran to Signora Violante and began to unlace her, and turned to bring her a little vinegar and fire. But because there was no fire I took some wood and put it in the fireplace to kindle it. When Signora Beatrice saw this she snatched the wood from the fire, in great anger, and told me to take the ashes, which were quite enough to warm her feet. So I took the ashes that were in the fireplace, but because of the intensely cold weather they were cool when I reached the room where the Signora Violante was half dead. Accordingly, the Signora Pompilia and I, both of us weeping, unclothed Signora Violante and put her in the bed, which was as cold as ice. And because I was crying when I returned to the kitchen, after having put Signora Violante to bed, Signora Beatrice said to me: "Do you want me to take a

little hemp and wipe your eyes?" Signora Francesa Pompilia also heard this, and she made some complaint to Signora Beatrice who did not want me to return to the room again nor to make a little gruel, as Signora Violante had ordered.

It happened a few days later, during the month of February following, that while the Signori Franceschini, Francesca Pompilia, Signor Pietro, and Signora Violante were at the table, they began talking of their purpose of sending me away, as the Franceschini had already dismissed me from service. When Signora Francesca Pompilia, who was at the table with the others as I have said above, heard this, she remarked to Signor Pietro and Signora Violante: "Do you know why they wish to send her away? They believe she wished to censure me because Signora Beatrice said some days ago that she would take hemp and wipe the tears from her eyes, when she was weeping over the accident that happened to you, mother." Then Signor Pietro spoke up and asked the Signori Franceschini to keep me in their good graces for eight or ten days more, for if he wished to return to Rome with Signora Violante he would take me with them. And he said he could expect this favour at their hands, as it was the first he had ever asked of them. To this, none of the Franceschini replied; but Signor Guido rose from the table and, approaching me, gave me two very good licks. The others then came up. While he was doing this, the Canon, his brother, also gave me some kicks, and his mother struck me and told me to leave at once. As soon as Signora Violante saw and heard this she took pity on me and exclaimed to the said Signori: "Where do you wish the poor thing to go now?" And all the Franceschini with one accord said to Signora Violante: "You get out with her, too." And they called her "slut," and other insulting names, so that Signora Violante went to her room to put on her wraps. The Canon drew a sword and ran after her into the room and shut the door. I, fearing that he would inflict some wounds upon Signora Violante, ran to enter the room and found that the Canon had locked himself within. So myself and Signor Pietro and Francesca Pompilia began to weep and to cry out for help, thinking that the Canon would kill Signora Violante there inside. And after some little time, I left the house, while the said couple and Signora Francesca Pompilia were still making outcry to the Signori Franceschini.

During all the time I remained in the service of the said Signori Franceschini at Arezzo, as I have said above, I can say of a truth that every morning and evening at the table I served

the said Signori Franceschini, Signora Francesca Pompilia, Signor Pietro, and Signora Violante Comparini. For the food of all this tableful, the Franceschini bought on Saturday a sucking lamb, on which they spent, at most, twelve or fourteen *gratie*. Then Signora Beatrice cooked it and divided it out for the entire week. And the head of the lamb she divided up for a relish three times, and for the relish at other times she served separately the lights and intestines. During the days of the week when they ate there was no other sort of meat on the table to satisfy the needs of all the tableful. When he did not buy the lamb on Saturday, as I have said, Signor Guido gave money to Joseph, the houseboy, to buy two pounds of beef. Signora Beatrice herself put this to cook every morning, nor was she willing for the rest to meddle with it, and they ate therefrom at the table and carved for the evening meal. And because this meat was so tough that Signor Pietro could not eat it (as they had not cooked it enough), Signor Pietro did without eating meat, for the most part, and ate only a little bread, toasted and in bad condition, and a morsel of cheese. Thus Signor Pietro passed the days when they bought beef. On fasting days he ate vegetable soup with a little salted pike, and sometimes a few boiled chestnuts. But always, whether on fasting days or not, the bread was as black as ink, and heavy, and ill-seasoned. Then the wine which served for the table was but a single flask; and as soon as the wine was poured into this, Signora Beatrice made me put in as much more of water. And so I made out to fill the wine flask, half of it being water, and very often there was more water than wine. This flask she put on the table, and ordinarily it sufficed for all those eating, although at most the flask did not hold more than 3½ *foghliette* [half-pints] according to Roman measure.

Furthermore, I say that, not many days after I had left this service, it was public talk throughout Arezzo that Signor Pietro had gone home about half-past six in the evening and had found the street door shut so that he could not open it, and he was obliged to knock. When Signora Violante saw that no one about the house was going to open the door, she herself went downstairs to do so, but the door was locked with a key. And although she called Signor Guido and others who were in the house, yet no one stirred to go and open it. Therefore Signor Pietro went to sleep at the inn, and in the morning returned to see Signora Violante and Signora Francesca Pompilia. It was likewise said throughout Arezzo that when Signor Pietro com-

plained at having been locked out of the house by the Canon, and when both Signor Pietro and Signora Violante reproached them bitterly about it, a new quarrel arose among them, and because of it both the Signori Comparini were driven out of the house. Signora Violante was received at the home of Signor Doctor Borri, where she dined that evening and spent the night. And Signor Pietro went to the inn to dine and sleep.

When I heard that, I went to the house of Signor Borri to see Signora Violante, but was not admitted. And the wife of Signor Borri told me to go and tend to my own affairs. For she did not wish the Franceschini, who lived opposite, to perceive that I had gone there to see Signora Violante, as some disturbance might arise therefrom. Then the next morning I went to the inn, where I had been told Signora Violante had gone to find Signor Pietro, but I did not find either of them, and was told by the host that they had gone out. So, not knowing where to find them, I returned to the home of Signora Maddelena Albergotti, where I was staying. And I heard afterwards that both Signor Pietro and Signora Violante had returned to the Inn, where they had breakfasted. Then by the interposition of the Governor of Arezzo they were reconciled with the Franceschini, and they returned indeed to the house of the latter. I heard also that the Franceschini continued to maltreat and insult the said couple, as they had continually done while I was in their service. Therefore they were finally obliged to leave Arezzo and go back to Rome.

All the abovesaid matters I know from having seen and heard the ill-treatment, which the Franceschini inflicted upon the Comparini and the insults which they offered them and Signora Francesca Pompilia; and likewise from having heard them talked about publicly throughout Arezzo, where it is known to every one and is notorious, and where there is public talk and rumour about it.

*No. 2.—Various attestations as to Francesca's recourse to the Bishop and Governor because of the cruelty of her husband and relatives.*

*June* 17, 1697.

To whomsoever it may concern:

We, the undersigned, attest as true: That Signora Francesca Pompilia Comparini, wife of Signor Guido Franceschini, has

many and many a time fled from home and hastened now to Monsignor the Bishop, and again to the Governor, and also to the neighbours, because of the continual scolding and ill-treatment which she has suffered at the hands of Count Guido her husband, Signora Beatrice her mother-in-law, and the Signor Canon Girolamo her brother-in-law. We know this from having met her when she was fleeing as above, and from the public talk and notoriety of it throughout the city of Arezzo. In pledge of which, have we signed the present attestation with our own hands this abovesaid day and year, etc.

I, Canon Alessandro Tortelli, affirm the truth to be as abovesaid, and in pledge thereto have signed with my own hand.

I, Marco Romano, affirm the truth to be as abovesaid, and in pledge, etc., with my own hand.

I, Antonio Francesco Arcangeli, affirm the truth to be as is contained above, with my own hand.

I, Cammillo Lombardi, affirm as is contained above, with my own hand.

I, Francesco Jacopo Conti of Bissignano, affirm as is contained above, and in pledge, etc., with my own hand.

I, Urbano Antonio Romano, a priest of Arezzo, and at present Curate of the parish church of San Adriano, affirm the truth to be as is contained above, and in pledge thereto have subscribed with my own hand.

Then follows the identification of the handwriting in due form, etc.

*Extract from a letter written by D. Tommaso Romani, uncle of Guido Franceschini, to Pietro Comparini in Rome.*

Most Illustrious Sir, my most Honoured Master:

I can not do less, etc., departure, she has been little like the Signora Francesca, etc.; she fled from home, and went into San Antonio. And thither ran also Signor Guido, the Canon, and Beatrice, etc., in order that she might come back, and in that belief the Signora Francesca returned home, etc. Yesterday, Signora Francesca and my sister were in the Duomo at sermon. At its close, while she was going away and was near

the gate of Monsignore, Francesca fled into the Palace, which is very near by. This was about seven o'clock in the evening, and there was a fine row in the Palace, etc.

*Extract from another letter written by Bartholomeo Albergotti, a gentleman, to Pietro Comparini.*

Most Illustrious Signor and most Cherished Master:

At my return, etc., the Signora, his wife, has been melancholy, and two evenings after your departure, she made a big disturbance, because she did not wish to go and sleep with Signor Guido her husband, etc. The day before Palm Sunday, the Signora went, etc., to preaching, etc., and in leaving there, she rushed into the Palace of the Bishop, etc. She took her station at the head of the stairs and stayed there until half past six in the evening; and neither Signora Beatrice nor Signor Guido were able to make her return home. Yet the Bishop did not give her an audience, but his secretary hastened thither and urged Signor Guido and Signora Beatrice not to scold the Signora his wife, etc. And after quite enough of such disputes, they took her back home, etc.

*No. 3.—Deposition of Francesca as to the letters asserted to have been written by her to Abate Franceschini, and previously outlined by her husband; recorded in the prosecution brought for her pretended flight.*

*March* 21, 1697 [for May.]

Francesca Comparini, when under oath, etc., when questioned whether she had ever sent any letter to Abate Franceschini here in the City, while she lived in Arezzo, replied:

While I was in Arezzo I wrote at the instance of my husband, to my brother-in-law Abate Franceschini here in Rome; but as I did not know how to write, my husband formed the letters with a pencil and then he made me trace it with a pen and ink it with my own hand. And he told me that his brother had taken pleasure in receiving such a letter of mine, written by myself. This happened two or three times.

When questioned whether, if she should see one of the letters written as is told above, and sent to the City to the same Abate Franceschini, she would recognise it, etc.

She replied: If your Honour would cause me to see one of

the letters written by me, as above, and sent to Abate Franceschini, I should recognise it very well.

And when at my command the letter was shown to her, about which there was discussion in the prosecution, and which begins *Carissimo Cognato sono con questa,* and ends, etc., *Arezzo* 14 *Guignio* 1694, *affetionatissima Serva, e Cognata Francesca Comparini ne Franceschini.*

She responded: I have seen and have examined carefully this letter shown me by the order of your Honour, which begins *Carissimo Signor Cognato sono con questa,* etc., and ends *Francesca Comparini, ne Franceschini,* and having looked at it, I think, but cannot swear to it as the truth, that this is one of the letters written by me to my brother-in-law, Abate Franceschini, in conformity [to my husband's wishes] as is said above.

*No. 4.—The tenor of the letter written as above to Abate Franceschini.*

Dearest Brother-in-law:

I wish by this letter to pay my respects to you, and to thank you for your efforts in placing me in this home, where, far removed from my parents, I live now a tranquil life and enjoy perfect safety, not having them around me. For they grieved me night and day with their perverse commands, which were against the law, both human and divine: that I should not love Signor Guido, my husband, and that I should flee by night from his couch. At the same time they made me tell him that I had no congeniality with him and that he was not my husband because I have no children by him. They also caused me to run away often to the Bishop without any reason whatever, and made me tell the Bishop that I wished to be divorced from Signor Guido. And for the purpose of stirring up great discord in the home, my mother told the Bishop, and Signor Guido, and then the entire town, that the Canon my brother-in-law had solicited me dishonourably, a thing that had never been thought of by him. They urged me to continue these evil counsels, which were far from right and far from the submission due to my husband. And they left me at their departure their express command, by my obligation to obey them, that I should kill my husband, give poison to my brothers-in-law and my mother-in-law, burn the house and break the vases and other things, in order that in the eyes of the world it might not appear after their departure that it was they who had counselled me to commit

so many crimes. And finally at their departure, they left me, as a parting command, that I should choose for myself a young man to my taste, and with him should run away to Rome, and many other matters, which I omit for blushing. Now that I have not her at hand who stirred up my mind, I enjoy the quiet of Paradise, and know that my parents were thus directing me to a precipice, because of their own rage. Therefore, now that I see in their true light these deeds proposed by the command of my parents, I pray for pardon from God, from yourself, and from all the world. For I wish to be a good Christian and a good wife to Signor Guido, who has many times chidden me in a loving manner, saying that some day I would thank him for the reproofs he gave me. And these evil counsels which my parents have given, I have now made known, and I acknowledge myself

Your most affectionate servant and sister,
FRANCESCA COMPARINI *ne* FRANCESCHINI.

AREZZO, *June* 14, 1694.

Outside directed to Abate Paolo Franceschini, Rome.

[The deposition of Pompilia is translated pp. 90-95 in its completer form as given in the Summary for the Defence. The only additional fact in this version is the date of the affidavit, Monday, May 13, 1697. She had been arrested at Castelnuovo, May 1.]

*No.* 6.—*Attestation of priests and other persons, worthy to be accepted in all respects; who gave Francesca assistance even till her death; they speak of her honesty, and her declaration that she had never violated her conjugal faith.*

I, the undersigned, barefooted Augustinian priest, pledge my faith that inasmuch as I was present, helping Signora Francesca Comparini from the first instant of her pitiable case, even to the very end of her life, I say and attest on my priestly oath, in the presence of the God who must judge me, that to my own confusion I have discovered and marvelled at an innocent and saintly conscience in that ever-blessed child. During the four days she survived, when exhorted by me to pardon her husband, she replied with tears in her eyes and with a placid and com-

passionate voice: "My Jesus pardon him, as I have already done with all my heart." But what is more to be wondered at is that, although she suffered great pain, I never heard her speak an offensive or impatient word, nor show the slightest outward vexation either toward God or those near by. But ever submissive to the Divine Will, she said: "May God have pity on me," in such a way, indeed, as would have been incompatible with a soul that was not at one with God. To such an union one does not attain in a moment, but rather by the habit of years.

I say further that I have always seen her self-restrained, and especially during medical treatment. On these occasions, if her habit of life had not been good, she would not have minded certain details around her with a modesty well-noted and marvelled at by me; nor otherwise could a young girl have been in the presence of so many men with such modesty and calm as that in which the blessed child remained while dying. And you may well believe what the Holy Spirit speaks by the mouth of the Evangelist, in the words of St. Matthew, chapter 7: "An evil tree cannot bring forth good fruit." Note that he says "cannot," and not "does not"; that is, making it impossible to infer the ability to do perfect deeds when oneself is imperfect and tainted with vice. You should therefore say that this girl was all goodness and modesty, since with all ease and all gladness she performed virtuous and modest deeds even at the very end of her life. Moreover she has died with strong love for God, with great composure, with all the sacred sacraments of the Church, and with the admiration of all bystanders, who blessed her as a saint. I do not say more lest I be taxed with partiality. I know very well that God alone is the searcher of hearts, but I also know that from the abundance of the heart the mouth speaks; and that my great St. Augustine says: "As the life, so its end."

Therefore, having noted in that ever blessed child saintly words, virtuous deeds, most modest acts, and the death of a soul in great fear of God, for the relief of my conscience I am compelled to say, and cannot do otherwise, that necessarily she has ever been a good, modest, and honourable girl, etc.

This tenth of January, 1698,

I, Fra Celestino Angelo of St. Anna, barefooted Augustinian, affirm as I have said above, with my own hand.

*Another attestation as above.*

We, the undersigned, being interrogated for the truth, have made full and unquestioned statement on our oath, that we were present and assisted at the last illness from which Francesca Pompilia, wife of Guido Franceschini, died. She was often asked by her confessors and other persons whether she had committed any offence against the said Guido, her husband, whereby she might have given him occasion to maltreat her in such a manner as to cause her death. And she always responded that she had never committed any offence against him, but had always lived with all chastity and modesty. And this we know from having been present during the said suffering, and from having heard all these questions and responses while we were giving her medical treatment, or otherwise assisting, and from hearing her respond to these questions, as above, during the four days while she was suffering from her wounds, as we have seen and heard her; and we have witnessed her dying the death of a saint.

In pledge thereto we have signed this present attestation with our own hands here in Rome this tenth of January, 1698.

I, Nicolo Constantio, etc., who assisted at the treatment of the said Francesca Pompilia during four days, attest as above, etc.

I, Fra Celestino Angelo of St. Anna, barefooted Augustinian, say that I was present from the first instant of the case, even to the end of her life, and was always ministering to her. She ever said, "May God pardon him in heaven as I pardon him on earth; but as for the matter they charge me with, and for which they have slain me, I am utterly innocent." In proof whereof she said that God should not pardon her that sin, because she had never committed it. She died as an innocent martyr in the presence of another priest, to the edification of all the bystanders, as I have affirmed above with my own hand.

I, Placido Sardi, a priest, affirm with my own hand as the abovesaid Father, Fra Celestino, has declared, having been present as above.

I, the Marquis Nicolo Gregorio, affirm as above with my own hand.

I, the undersigned, affirm what is contained in the abovewritten statement, as well as in the attestation of the reverend Father Celestino of Jesu and Maria. I assisted the abovesaid Signora Francesca Pompilia from the first, having picked her up from the earth where she lay in utter weakness because of her wounds. She had her head upon the legs of Signor Pietro Comparini, who was already dead. She made confession in my arms to the Principal of the Greek College, because she could neither rise up nor lie down. And from that hour I never left her, but always ministered to her even unto her death. She was the most exemplary and edifying Christian I have ever seen. For I saw her resigned to the divine will, and she always relied upon her own innocence, etc.

I, Giuseppe d'Andillo, with my own hand.

I, the undersigned, attest and affirm what is contained in all the said affidavits, from having assisted the said Francesca Pompilia, etc.

Dionysio Godyn, with my own hand.

I, Luca Corsi, affirm with my own hand as is contained in all the said attestations, from having assisted day and night as long as the malady of the former Francesca Pompilia continued, and from having heard as above.

I, Giovanni Battista Guitens, apothecary, who have assisted at the treatment and care of the said Francesca Pompilia, affirm with my own hand as is contained in all the above affidavits and attestations, from having assisted continually throughout a night and a day at the malady of the same.

I, Giovanni Battista Mucha, the boy of the said Giovanni Battista Guitens, apothecary, affirm with my own hand as is contained above in the said attestation, from having assisted with the former Francesca Pompilia.

Full and unquestionable statement is given by me the here undersigned, Abate Liberato Barberito, Doctor of Theology, that, as I was summoned to assist at the death of the said Signora Francesca Comparini, I often noticed, and especially during an entire night, that the above-named defendant suffered the pains of her wounds with Christian resignation, and condoned with superhuman generosity the offences of the one who had caused her innocent death with so many wounds. I also observed during the night the tenderness of the conscience of the above-named. For she passed it in showing the unwavering feelings of an heroic and Christian perfection. And this so much so that I can attest that during the experience I have had, having been four years Vicar in the Cure of Monsignor, the Bishop of Monopoli, of blessed memory, I have never observed the dying with like sentiments. And this is all the more so in an evil, caused so violently by another. Therefore in pledge, etc. Rome, this tenth day of January 1698.

I, Abate di Liberato Barberito, affirm as above, etc.

[File-title of Pamphlet 5.]

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*By the Most Illustrious and Most Reverend Lord Governor of the City in Criminal Cases:*

# *ROMAN MURDER-CASE.*

*In behalf of the Fisc, against Count Guido Franceschini and his Associates.*

*Memorial of fact and law of the Lord Procurator General of the Fisc.*

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*At Rome, in the type of the Reverend Apostolic Church,*
1698.

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# ROMANA EXCIDII

[Pamphlet 5.]

Most Illustrious and Most Reverend Lord:

The deplorable slaughter of the entire Comparini family, which occurred in this dear city of ours on the second night of the current month of January, and the shedding of their blood, cries out from earth to God for vengeance upon the criminals. And in order that we may fulfil the obligations of the office we are occupying, we have paid down the price of toil to narrate here with faithful pen the series of events. From this, my Lords Judges may readily see what laws may be applicable for a decision as to this cause and for the punishment of the delinquents for the same deed, etc., and so Barbosa says in his axioms in jurisprudence, axiom 93, No. 1: " Just as from the deed the law takes its rise, so from the deed the law dies."

The series of facts, therefore, is as follows: Guido Franceschini of the city of Arezzo, married Francesca Comparini, for whom, by Pietro and Violante Comparini, there were promised as dowry, among other matters, certain properties subject to a reversionary interest. For they had brought this same Francesca up in their home as their own daughter, and as such they married her. Then, as the aforesaid Pietro and Violante had no other children, they left their home in the City to go and live in the home of Franceschini at Arezzo. There, for some time, they continued to live together in peace; but, as often happens among friends and relatives, contentions and quarrellings arose. On account of these, the aforesaid Pietro and Violante left that home and the city of Arezzo, and went back to Rome. In the meantime, as the flame of this enkindled hatred increased, a lawsuit was instituted as to the dowry once promised, but now denied by Pietro, on the pretext that Francesca was not indeed the daughter of the same Pietro and Violante, but that, after a pretence of her birth had been made, she had been received and brought up by them. And for this reason the said Guido and Francesca could not hope for the inheritance of the properties under the reversionary interest. But although Franceschini

gained a favourable judgment on this point, yet when appeal had been made on behalf of Pietro Comparini, Francesca declared that she was ill-treated in the home of her husband by himself, and therefore desired to leave that home. Accordingly with the aid and companionship of Canon Caponsacchi, a relative of the said Franceschini, as is supposed, she ran away. But Franceschini had notice of his wife's flight and, following her up, he overtook her at the tavern of Castelnuovo. There he went to the governor of that place and saw to effecting the capture of his wife and the Canon, as indeed followed. Then the quarrel was continued. A criminal suit was brought in this Tribunal of the Governor of the City; the process of action was arranged, and the counsel on both sides was often heard, both by word of mouth and in writing. At last it was decided that owing to lack of proof of adultery the said Canon should be banished to Civita Vecchia and Francesca should be held in safekeeping. But because the Comparini claimed that the furnishing of food in the safekeeping was the duty of Franceschini, and the latter declared it lay with Comparini, the most Illustrious Lord Governor, having first secured the consent of Abate Paolo, the brother of Guido and his representative in the case, assigned the home of the Comparini to Francesca as a safe and secure prison under security.

While these contests were still pending, both in the civil and criminal cases, as well as in that for divorce brought by Francesca, the wife, this same Franceschini schemed to take vengeance upon the abovesaid. For the execution of this criminal purpose he brought together Domenico Gambassini of Florence, Alessandro Baldeschi of the region of Castello, Francesco Pasquini Antonii of the Marquisate of Monte Acuto, and Blasio Agostinelli of the town of Popolo, and dwelling at the Villa Quarata. He provided them with swords and dagger, prohibited by the Bull of Alexander VIII., and entered the City in company with the aforesaid men. Approaching the home of the Comparini, at the first hour of the night, he secured the opening of the door to himself under the pretence of bringing a letter, sent to Violante by the said Canon Caponsacchi, then staying at Civita Vecchia. As soon as the door of the home was opened by the said Violante, the aforesaid Guido and his companions immediately set upon her. She was cut to pieces with their swords and immediately fell dead. Pietro likewise was cut down and died. Francesca, however, tried to hide under a bed, but was found and wounded in many places. Then, as if God granted

her the favour, she was not left utterly dead, though after a few days she also passed away; and thus she could reveal this monstrous crime. As soon as my Lord Governor had notice of this, with most vigilant attention, he saw that the malefactors were pursued beyond the City. Accordingly that same night, they were discovered in the tavern at Merluccia with firearms and illegal swords, still bloody, and were taken back to prison. Then, when a case had been made against them, they were examined as to the crime. Some of them indeed confessed it, and although the others made denial of the management and knowledge of the killing of the entire family, yet against them there are most urgent presumptions of the knowledge and management abovesaid. Furthermore, from the same prosecution the gravest proofs have resulted, such as can be but slightly attacked and controverted by the Defence.

Hence, when this cause may be presented to receive judgment, we believe that no foundation can afford defence for the criminals to escape the capital penalty, so far as they have confessed their crime, or can release those who have denied it from the rigorous torture of the vigil. For what if the Defence do strongly argue the question as to whether a husband who kills an adulterous wife, not immediately and when found in adultery, but after an interval, ought to be excused from the ordinary penalty of the *Lex Cornelia de Sicariis?* Some authorities indeed give an affirmative opinion for the excuse of the husband, as is to be seen in Giurba. [Citations.] Yet all of these authorities for mitigating the penalty upon a husband who kills his wife after an interval are moved by this reason: That since the sense of injured honour always oppresses the heart, it is difficult to restrain just resentment; for this reason the defence of the honour is said to be immediate when done as quickly as possible.

But there are indeed many other authorities who stand by the negative, asserting that a husband who kills his wife, otherwise than when taken in adultery and in acts of passion, should be punished with the ordinary penalty. [Citations.] Rainaldi [Citation] says this opinion is the truer and the more advantageous to the state, nor should one depart from it in giving judgment. Sanzio says that it was often adjudged in this Senate that a husband was not excused by adultery legitimately proved, if he killed his wife after an interval; and for this reason, because formerly, according to the law of Romulus, a husband could kill his wife, but the *Lex Julia* permitted him to kill only the vile adulterer, as Matthæus proves. [Citation.]

But in this our present show of fact we believe we are dealing with a matter outside of the difficulty of this proposed question. For the authorities cited above for the contrary opinion hold good, and should be understood to do so, whenever the contention is about a husband who has killed his wife without excess of law and with no concurring circumstances and aggravating qualities, and when moved only by just grievance. But it is otherwise when, as in our case, excess and contempt of law is present and aggravating circumstances and qualities concur. Laurentius Matthæus [Citation] testifies that, according to common practice, such a distinction has been followed out. And after he had affirmed that a husband should be excused from the ordinary penalty and be punished more mildly, he adds: "For these reasons, it is the common practice to weigh the effect of the grievance and to punish only the excess; so that if the suspicion of guile in the manner of killing is present (as he considers any circumstance which tends toward treachery) the penalty is aggravated."

The aggravating circumstances which concur in our case are indeed many, and they are so grave that any one of them is enough reason for imposing the death penalty or for qualifying the crime.

The first of these is the assembling of armed men; for according to decrees of the Governor of this City, the penalty of death and of the confiscation of goods is inflicted upon the one assembling the men; and this is true even if those assembled are but four, as is read in chapter 82 of the same Banns. This circumstance and quality cannot be evaded on the authority of certain jurists who assert that it is permissible for a husband to kill his wife, even by means of men thus brought together. For the said authorities speak, and should be understood, in a case in which a husband may kill with impunity an adulterer and his own wife in the very act of adultery, or in the home of the husband. But it is otherwise if she is killed after an interval, or outside of the home of her husband; according to what is given. [Citation.] Or these matters might hold good if in no other way he could kill the adulterer and his wife. So think all authorities who can be adduced in favour of the husband. This cannot be said in our case since Franceschini, while following his wife with firearms, could have taken vengeance at the inn of Castelnuovo. But he had recourse to the judge, and chose the legal way of punishing his wife and the Canon with whom she fled. Or these claims would hold good if he had assembled a smaller

number of men, whereby the crime of conventicle would not have been established. And this is the more strongly to be held because we are not concerned with a deed that is unpunishable, and permissible by law, as I have said.

Nor do we believe that the Defence can make a claim that the husband may kill an adulterous wife after an interval with impunity; for all the authorities who can be adduced in favour of the husband free him indeed from the ordinary penalty, but not from an extraordinary penalty, as those adduced by us above in § *Hinc cum Causa* can be seen to hold. If therefore, in our case, the husband committed a crime punishable in itself, how could he assemble a number of men forming a conventicle prohibited by the Banns, without incurring the penalty threatened by them?

The second quality and circumstance is the carrying of arms contrary to the specification of the Constitution of Alexander VIII., which is extended to the whole Ecclesiastical State. Still less can the authority of jurists be alleged in excuse from this threatened penalty, if the husband kill an adulterer and the wife with prohibited arms. For aside from the response given by us in the explanation of the first circumstance of assembling and of conventicle (namely that these authorities hold good and should be understood to apply only in cases permitted by law, and therefore unpunishable), we say still further that they have very little application as regards the arms we are discussing; since the said Constitution prohibits not merely the carrying of such arms, but even their retention, manufacture, or introduction into the City and the Ecclesiastical State, under the penalty of rebellion and criminal insult to the majesty of the law. And so far as we are acquainted with such cases as are permitted by law, the authority of these jurists should be understood to hold good concerning arms, the carrying of which is indeed prohibited, but not the retention and introduction under any pretext whatsoever, even the pretext of justice; as is included in this same Constitution § 1, where we read: "Or to carry them on any pretext whatever, whether of military service or of the execution of justice, and still less to keep them in one's home or elsewhere." And in § *Ad haec* it prohibits even the introduction of them: "the retention of them at home, in storehouses, and elsewhere, their introduction into the Ecclesiastical State, and their manufacture."

If therefore the retention and introduction of such arms is prohibited, even when on the pretext of executing justice,

ridiculous indeed would be Franceschini's pretence that he could approach the City and the home of his wife with such arms to vindicate after an interval this pretended offence of honour. This is the more certain as the crime concerning such arms is grave and of itself is punished with the capital penalty, as we have proved. In this case, when the crime actually follows, if the penalty for carrying the arms is greater than for the crime itself, the penalty for the graver offence is held to apply, and includes the lighter. [Citations.]

The third circumstance is that Franceschini and the aforesaid men committed the murders in the very home and dwelling-place of the Comparini; because homicide is always said to be qualified when it is committed in the home of the one slain; since the home should be a safe refuge for its master, etc. Then also Franceschini entered with changed garb; in which case the murder is said to be committed *ex insidiis*. [Citations.]

The fourth quality and circumstance is that the said Francesca was under the power of the judge, since the home, as we have said in our narrative of fact, was assigned to her under bond to keep it as a safe and secure prison. And hence she was under the protection of the court. [Citations.] And this is especially true when arguing in favour of the one who is under protection of the court, whatever may be said when arguing to his prejudice. And therefore the law holds that one under the protection of the court cannot be killed under less penalty than the death [of the assassin]. [Citations.]

But all debate seems to cease since it is proven in the process that the said Franceschini approached the said home with his company of men with the thought and intent to kill not merely Francesca, his wife, but also Pietro and Violante. These, as he himself acknowledges, he hated with a deadly hatred, because of the suit they had brought and because they had urged Francesca to poison her husband and her brother-in-law, and had kept his wife in their home so that still further, in the continuation of the adultery, his honour was offended. But aside from this, as we have said above, Francesca was placed in the said home by the authority of the judge with the consent of the brother of this same husband, and so the question does not enter as to whether a husband may lawfully kill the relatives, friends, and servants of his adulterous wife, even if he does suspect them of affording their leave or assent to the wife committing adultery; since the special rights and privileges conceded to the husband should not be multiplied against the wife,

and be given greater scope, but rather should be strictly interpreted. [Citation.] This holds good not merely when one is arguing about the prejudice of a third party, but concerning one's sole prejudice. [Citation.] In our very circumstances we read that the permission cannot be passed from person to person. [Citation.] Yet we can more truly declare that such an assertion of adultery on the part of Franceschini is calumniously false; for, in the very face of death, Francesca protested, to the very damnation of her soul, that she had given no offence to her husband's honour. This protestation is the more to be believed since those about to die are not presumed to be unmindful of their eternal salvation. [Citation.]

The other causes adduced by Franceschini himself, so far as they are true, can indeed prove hatred and enmity existing between himself and the couple, which would tend in that direction and so would serve to prove in him a cause for their premeditated murder. But this is not sufficient to excuse him from the ordinary penalty of death, which premeditated homicide altogether demands. [Citations.] And it is for this reason, because the laws prohibit private vengeance (that is, vengeance which those without public office usurp to themselves because of their hatred, by killing or otherwise injuring men). [Citations.] Raynaldus affirms that in premeditated murder the ordinary penalty is inflicted not merely upon the slayer himself, but also upon all others who aid and give help, or concur in committing the murder by their help or council. [Citations.]

FRANCESCO GAMBI,
*Procurator General of the Fisc and of the Reverend Apostolic Chamber.*

[File-title of Pamphlet 6.]

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*By the Most Illustrious and Most Reverend Lord Governor in Criminal Cases:*

# *ROMAN MURDER-CASE,*

*with qualifying circumstance.*

*For the Fisc, against*
*Count Guido Franceschini and his Associates.*

*Memorial of the law in the case by the Advocate of the Fisc.*

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*At Rome, in the type of the Reverend Apostolic Chamber,*
1698.

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# ROMANA HOMICIDII CUM QUALITATE

[Pamphlet 6.]

Most Illustrious and most Reverend Lord Governor:

Since the chief defence of Count Franceschini, the Accused, as we have heard, consists in the pretended plea of injured honour, by which he was moved to crime, it is the office of the Fisc to disclose the lack of foundation for this plea, in order that this atrocious and enormous crime may be punished with the due penalty.

Therefore I assume that we ought to examine the foundations on which the asserted plea of injured honour may rest; namely the flight of the unfortunate wife from the home of her husband in company with Canon Caponsacchi, with whom she was taken at the inn of Castelnuovo, and the pretended love-letters which were put forward in the prosecution of Pompilia for the said flight and departure. The pretended dishonesty of the wife is drawn from these two; but along with them other proofs were brought together in the said prosecution; the latter, however, are either altogether stupid or equivocal, or else unproven. This may be inferred from the dismission of the said Francesca, his wife, merely with the precaution of keeping her home as a prison and of the Canon with a three years' banishment to Civita Vecchia. Such action shows that in this same prosecution there was found by the Fisc no legitimate proof of dishonesty and of the pretended violation of conjugal faith, which the husband had charged against her.

And indeed, from the defences then made and even from the trial itself, a very just cause has clearly appeared, which forced the luckless girl to flee from the home of her husband and to go back to her own home, there to live safely and quietly with her parents. Notorious indeed are the altercations which, on account of the parsimony of the Franceschini home, straightway arose between the parents of the wretched girl on the one hand, and the Accused, his mother, and his brothers on the other hand. The former in vain bewailed the fact that they had been deceived by the show of no small opulence, on account of the false statement

of an annual income of 1700 scudi, which was afterward shown to have no existence. Indeed, while they stayed in the home of the accused husband in Arezzo, they were so badly treated by himself and his relatives that after a few months they were obliged to leave it and return to the City. During the whole time they lived there, contentions and reproaches throve continually among them. The Comparini were indeed excited with just indignation by the deception they had suffered. This is evident from the letters of Abate Paolo Franceschini, which presuppose these troubles and which were considered for the Defence by the Procurator of the Poor. These prove that hostility of mind had even then been conceived against the unfortunate parents, especially the one written March 6, where we read: "I write again to you that I do not wish to imitate him in his manner of writing, not being of his mind to sow broadcast in letters such words as would merit response by deeds and not by words. And these are so offensive that I have kept them for his reproof and mortification." And further on he says: "So that if you give us trouble, which I will never believe, you yourself will not be exempt therefrom." But sufficient proof results from the letters, as the following advise. [Citations.]

And although these letters do not make clear the nature of their altercations, yet some of them more than prove the reproaches had so increased that their bitterness grew into hatred as is evident from the letter of February 12, 1694, where we read: "But hearing from the one side or other that the bitterness between them, not to say the hatred, is increasing." It would be all too easy for the Accused and the Abate, his brother, to prove, by showing letters written to him, that the reproaches were unjust and were occasioned by the Comparini themselves. This is apparent from the tenor of the said letter, where we read: "Because I feel that the enemy of God has put strife among them, it is improper that I should fulfil my duty toward you of a reply." But since the Franceschini did not show such letters, the presumptive truth of these same complaints and of this cause of complaint and altercation is strongly against the ones thus concealing them. In such circumstances the Roman court thus affirmed. [Citations.]

But the truth of the charge of ill-treatment toward the parents, whom he was obliged by the dowry contract to provide with food, is also to be drawn from the deposition of a servant, as given in the Summary, No. 1. And since this would excite the pity of any who read, it becomes all the clearer that, by such very ill-

treatment of her parents, the mind of the wretched wife was greatly exasperated; for she kept grieving in vain at seeing them thus troubled; yes, and she was even prohibited from grieving.

And any one may know that the return of her parents to the City would indeed disturb with a considerable and very just grief this wretched child who was not more than fifteen years old. For she was destitute of all aid, and was left exposed to her husband's severity, because of which she daily feared that she was in peril of her life. In vain did she have recourse to the Reverend Bishop and to the Governor, Summary, No. 2. In vain was the interposition of certain noblemen tried; which had proved utterly useless, as is evident from the letter of March 6, where we read: "But what remedy can I give you, when so many gentlemen friendly to both parties have interfered to settle the troubles and it has not turned out well?" She might indeed think that no other remedy was left her than to flee from the abode of her husband and to seek again her father's home. As therefore she fled to escape deadly peril, her flight can afford no proof of dishonesty nor of the violation of conjugal faith; for it is attributable to a lawful rather than to a criminal cause. [Citations.]

But there was another urgent cause for her eagerly desiring to seek her father's hearth, namely the ill-health of her father. She speaks of this in the letter which mentioned that she cannot look for the company of Gregorio Guillichini, and that this task had to be remitted to the Canon [Caponsacchi]. Hence we can well infer that she was arranging for the flight for legitimate reasons.

No reliance whatever can be placed in the letter written by this same wife to Abate Franceschini. In that she thanks him for having joined her in marriage with the Accused, his brother. And she also acknowledges therein that, since the departure of her parents, she was living a life of utter tranquillity; because their evil persuasion, which was alienating her from her husband, had ceased. She also reveals a very base plan that had been proposed to her, namely, to destroy the entire household. Now the wife in her sworn statement frankly confesses that she wrote this letter to appease her husband, and that he had marked the characters, which she had afterwards traced with a pen. This statement is found in an extract from her sworn testimony as given in our Summary, No. 3. And a mere reading of the said letter so thrills one with horror that it is incredible that the luckless girl could have written such matters to the injury and

detraction of her own parents, unless she had been compelled thereto by fear of her husband. For this reason the same letter is given in our Summary, No. 4.

But even just ground of fear, because of which the luckless girl was moved to flee, has come to light, namely, the lawsuit brought by her father against the Accused for the nullification of the dowry contract. This contract had been made on false grounds; for Pietro had believed that he was promising the dowry to his own daughter, but then, from a confession made by the mother, he had found out that she was none such and that Violante had made pretence of giving birth to the child for the purpose of deceiving her husband and barring his creditors. Since Pietro had assigned all his property as dowry (and indeed it was of considerable value when we consider the quality of the persons concerned) he soon raised a dispute about it. And we may well fear that very grave and even deadly hatred arose therefrom. Thereby the conjugal peace, which had been disturbed by long-continued altercation, was utterly destroyed by recrudescent hatred. For a lawsuit as to a considerable amount of money, much more as to an entire property, would produce this effect, as daily experience well teaches us and as Grammaticus and others assert. [Citations.]

Such just fear should be well considered by a prudent judge, who will take into account the circumstance of the persons and of the time. [Citation.] In our case it may be absolutely affirmed that these matters should be so considered, inasmuch as not merely a girl of tender age (as was the unfortunate wife, who was destitute of all aid and exposed to the severity of the husband, who had sought her life with a pistol and had threatened her with death on trivial suspicions), but even a woman of greatest fortitude would be unable to bear being exposed to such constant risk of her life and would see the necessity of taking care of herself. And whatever the cause, even if it were merely supposititious, it would be enough to excuse her according to the text. [Citations.] And Canon Rainaldi holds, that it is enough if one see the signs or acts of manifest desire, or preparations thereto. How much more excusable and how worthy of pity should Francesca be considered, since she had such an urgent and such a well-verified cause for fleeing? Mogolon holds that the mere sight of arms, even though the one having them does not use them nor unsheathe them, is just cause for fear.

Nor can presumption of dishonour and of violated conjugal faith arise from the company of Canon Caponsacchi, with whom

she fled, and for which flight he was condemned to three years' banishment in Civita Vecchia. For the luckless girl was destitute of all aid, and the demands of her age, of her sex, and of her station in life, did not admit of her undertaking so perilous a journey either alone, or in company with any baseborn woman. For then, in escaping dangers at home, she might incautiously expose herself to even graver perils; as might have happened if while alone she had been overtaken by her husband in the journey. Nor could she find any safer companion than this very Canon, who was bound by friendship to the Canon Conti. And the latter, who was a familiar friend and blood-relative of the Accused, although he had great pity upon her condition, judged it safer for her to flee with Caponsacchi, whom he believed to be apt and far-seeing to bring about the desired end. Otherwise she would have undertaken this flight with even greater risk. Therefore this necessary and prudent choice of the lesser evil excludes all suspicion of pretended dishonour. [Citations.]

This suspicion is also excluded by the manner in which the flight was put into effect, namely in hurrying to the City by the direct route and with the greatest possible speed. For if the unfortunate girl had fled for the purpose of satisfying her lust with the same lover, the Canon Caponsacchi (as was charged elsewhere and as is repeated now even more bitterly to prove the plea of injured honour), she would either have delayed somewhere out of the public highways, where she could not be seized by the Accused, or she would not have approached the City with such great speed. She would have done neither of these, unless she were making the journey for the purpose of seeking again her father's hearth, where she hoped to find security for her life and her honour. It would be far too imprudent a plan for a lover to take a wife from the home of her husband to some other place where he could not possibly satisfy his lust. This improbability alone would be enough to prove the truth of the cause given by the wife in her affidavit—namely, that she had fled to avoid the deadly peril in which she feared she was placed, and that she might return to her father's hearth. The Canon also gave her his aid and companionship out of mere pity, and her honour was kept entirely untouched. The probabilities are always to be very much observed in arguing about a crime, or in excluding it, as the following hold. [Citations.]

Still less firmly established is the other ground for the asserted plea of injured honour, which has been offered elsewhere by the Accused on the basis of the asserted love-letters. These letters,

it was pretended, had been written in part by that most wretched girl to the Canon, and in part by the Canon himself. All these, it was claimed, had been found in the privy of the inn at Castelnuovo, where they were said to have been cast for the purpose of hiding them. Response was indeed then given by the Procurator of the Poor that the identity of the handwriting was unproved and uncertain; for the letters did not show to whom they were directed. And these responses were indeed admitted, since no punishment was inflicted upon Francesca, and she was simply dismissed with the precaution of keeping her home as a prison. And even though these letters, when we investigate their hearing, seem to give proof of excessive goodwill, yet Francesca could have made pretence of this for the purpose of winning over the Canon, who was reluctant (as she herself acknowledges in her affidavit), to afford her aid by giving her his company back to the City in the execution of her premeditated flight. It is indeed quite evident that the letters were prepared for this purpose. (Summary, No. 5.) And therefore this wretched girl, who was destitute of all aid and was placed in imminent risk of her life, should be judged worthy of all pity, if with gentle and even with loving words she tried to entice the Canon, whom she believed was well suited to afford her aid. Nor can stronger proof of violated modesty be drawn from these letters written for the purpose of the flight than from the flight itself. Nor is it a new thing for the most chaste of women to use similar arts sometimes for quite permissible ends. In the sacred Scriptures we read that Judith did so to deceive Holofernes, for the purpose of freeing her country. This luckless girl could therefore do so without any mark of dishonour, for the purpose of escaping deadly peril.

We may speak still further of her confidence in her own continence as well as in the integrity of the Canon. Concerning this, a certain witness, examined by the Fisc in the said prosecution at the instance of Count Guido, who was then present, testifies to hearing from Gregorio Guillichini (likewise a relative of the Accused) as follows: "Signor Gregorio then added that the Signor Canon was going there for a good reason, and that therefore Signora Francesca had desired to go to Rome. And he told me also that no ill could arise from it, because there was not the slightest sin between them." The deposition of this witness, which is directly contrary to the party who had brought her into court, fully proves our point as the following hold. [Citations.] And therefore, since the luckless girl can be suspected of no evil from her association with Canon Caponsacchi,

and since she had no other help more suitable for carrying out her plan, her dealings with him by letter ought to be excused as ordered to this end, even though we may read certain loving expressions in them. The latter, indeed, should be considered rather as courtesies adapted to winning his goodwill, and they should always be interpreted according to the thought of the one proffering them. [Citations.]

Still further, there is added the participation of the Canon Conti, a nobleman and a relative of the Accused, who forwarded the attempt. It is incredible that he would have been willing to plot against the honour of Guido, but he would merely wish to snatch that wretched girl from imminent death because of his pity of her. And such participation is made clearly evident from the very letters which it is pretended were written by Caponsacchi.

Of lighter weight still are the other proofs of pretended dishonesty; [first] the approach of the Canon to the home of the Accused at night time, for the purpose of speaking with the wife who was slain; [secondly] the kissing on the journey to Rome, concerning which Francesco Giovanni Rossi, driver of the carriage (commonly called calesse) bears witness; and [third] the pretended sleeping together in the same bed at the inn of Castelnuovo. As regards the first of these three, there is defect of proof; for it rests upon the word of a single witness only, Maria Margherita Contenti, and she endures the most relevant exception of being a public harlot, and so she alone can prove nothing. [Citations.] And since such approaching of the house was ordered to the permissible end of removing the wretched girl from the imminent peril of death, by taking her back to her father's house, it cannot be brought as a proof of illicit commerce. For the mere possibility that it was done for this purpose is enough to oblige us to take it in good part, according to the text. [Citations.]

This is especially so since the very witness who swears to this approach of the home states, by hearsay from the said Gregorio Guillichini, that it was to a good end, and that no sin was taking place between the Canon and the wife who is now slain. And, as Guillichini was better informed, and was indeed a friend and, as I understand, a relative of the Accused, this excludes all suspicion to the contrary. With this testimony another deposition seems to agree, namely, that of the Canon Franceschini, brother of the Accused, who when questioned as to whether he knew if any intimacy had existed between Canon Caponsacchi and

Francesca, replied: "This we never knew of beforehand; but after the criminal flight the whole town said that there must surely have passed some correspondence between them." His ignorance quite excludes and renders improbable any furtive and illicit approach to the home by the Canon Caponsacchi. For if the Accused had indeed threatened to kill his wife on account of unjust suspicion of Caponsacchi, we may well believe that Guido himself, his brother, and all the household would have kept guard for her safe keeping with all their might. And so, the said approach to the home, if it had been frequent (as is alleged), or if it had been for an ill end, would have been observed by them.

[Secondly] under this same defect of proof lies the pretended kissing of each other on the journey. As to this matter only a single witness testifies, whose excessive animus is shown by his assertion, for he asserts that he saw this at night; nor does he give any reason for his seeing it, such as that the moon was shining, or that he could see because some artificial light was dispelling the gloom. As no such reason is given, he deserves no credence, as the following observe. [Citations.] Another very great improbability is added thereto—namely, that while he was driving the carriage with such velocity that it rather seemed to fly than advance swiftly, he could not have looked back to see such mutual kissing. This improbability likewise takes away from him all right to belief, according to what the following hold. [Citations.]

But the assertion of that most wretched girl herself is also well suited to exclude all suspicion of her pretended unchastity. This was made by her after she had suffered many severe wounds in the very face of death itself, at the demand of the priests and other persons ministering to her. For, according to their attestation, she asserted that she had never sinned against her conjugal faith and had always conducted herself with all chastity and shame: "We were present and assisted at the last illness from which Francesca Pompilia, wife of Guido Franceschini, died. She was often asked by her confessors and other persons whether she had committed any offence against the said Guido, her husband, whereby she might have given him occasion to maltreat her in such a manner as to cause her death. And she always responded that she had never committed any offence, but had always lived with all chastity and modesty." And Fra Celestino Angelo of St. Anna, of the order of barefooted Augustinians, in his testimony, bears even more exact witness to this constant assertion of her innocence, where he writes: "She always said,

'May God pardon him in heaven, as I pardon him on earth, but as for the sin for which they have slain me, I am utterly innocent': in proof whereof she said that God should not pardon her that sin, because she had never committed it." An assertion like this, indeed, given in the very face of death, deserves all credence, since no one is believed to lie at such a time, as the following assert. [Citations.] Menocchius speaks in these very circumstances of one suspected of heresy, saying that such suspicion is removed if in the hour of death the accused say and protest that he had lived and wished to die and to trust according to what is pleasing to the Sacred Roman Church, etc. [Citation.] And Decianus cites the opinion of Albericus, who declares that by means of an assertion of this kind, made before the Cardinals, the memory of Pope Boniface had been defended, and that this very Albericus had in this way defended Gian Galeazzo Visconti of Milan.

And this is more especially true since all the said witnesses agree that this most wretched girl died with the highest edification of the bystanders, and that she had always shown the deeds of Christian perfection, as we find in the said attestations, where we read: "And from having seen her die the death of a saint." And there is another statement of the said Father Celestino Angelo, which infers the innocence of her past life from her conduct just before death. All these matters are given in our Summary, No. 6.

But, however rightly the Accused might draw some suspicion of his wife's dishonesty from her flight and from these letters, the tenor of which seems to prove them love-letters (which suspicion could excite due anger), yet this would not make excusable such truculent vengeance, taken after so great an interval. For this vengeance was taken, not merely upon his most wretched wife, but also upon her parents, who were entirely off their guard and quite undeserving of such a fate. And these murders were attended with such grave circumstances, aggravating the crime, that he would have to be punished with death even if he had not confessed the murders. For although just anger because of violated conjugal faith usually moderates the penalty for a husband killing his adulterous wife, yet one can no longer argue for total impunity after an opportunity to take vengeance on the adulterer and adulteress has been thrown away. [Citations.]

But an especial and indispensable requisite is that the wife be taken in adultery, according to the text. [Citation.] "For thus it wishes this power to lie with the father, if he take his

daughter in her very sin." Labeo also approves this, and Pomponius writes that she may be killed when taken in very licentiousness, and this is what Solon and Draco say. [Citations.] Much more does this hold good in the case of a husband, whose wrath may be kindled much more easily against a wife by sinister and unjust suspicion conceived about her. For the husband is not always accustomed to take good counsel for the wife, which the law presumes that the father does by natural instinct, etc.; and it excuses the father only when he kills his daughter along with her defiler, or inflicts wounds unhesitatingly upon her.

And this is so true that it is not enough if the wife be found only in acts that are remote from, or merely preparatory to adultery, as authorities commonly affirm. [Citations.] John Teitops holds thus, and I think it well to quote his words, since the Judges may not have him at hand, and he thus explains the words of the said text: "Therefore they argue that acts preparatory to adultery do not suffice, but the obscene commingling of limbs is required." And after citing his authorities, he adds: "And this is more clearly evident from the words of Solon as given by Lucian, the Eunuch," where we read: "Unless they lie who say that he was taken in adultery." And then he criticises the opinion of Accursius, who asserts that acts preparatory for adultery are enough. And in the second paragraph after this decision is given he asserts that his opinion should be understood to be concerning immediate preparations, and he so explains his decision, where he says: "From the taking of the adulterer alone and naked with her alone and naked, and lying in the same bed, violent and certain suspicion of adultery arises, wherefrom the sentence of divorce may be granted."

But the laws adduced (at letters I & J) show that strong suspicion does not indeed suffice. For this sort of discovery is the true taking in the act of adultery. And from a civil case under the said letter, one argues weakly for proof in a criminal cause. For no one can be condemned, much less killed, on suspicions alone in the absence of law. And violent suspicion is not indubitable ground for proof, such as is required in criminal cases. But indeed such suspicion is fallacious, because persons might be found to act thus for the purpose of committing adultery, and yet not actually to have committed the adultery, as Gravetta and others say.

The Accused might indeed have contended merely for the tempering of the penalty if he had killed his fugitive wife in the act of taking her at the inn of Castelnuovo in company with

Canon Caponsacchi. But when he neglected to take vengeance with his own hand and preferred to take it by law, he could not then kill her after an interval. This is according to the text [Citation], which affirms that one can put off the vengeance from day to day. [Citations.] Farinacci asserts that it was so held in practice, lest men should be given the opportunity of avenging their own wrongs. And he confutes Bertazzolus, who places on the same footing a case of taking in adultery, and says that the wife may be convicted of it provided that there be no doubt of it. Nor may the suspicion of the husband, which gave a strong ground for the difference, be unjust or too ready. Because just grievance, exciting a wrath which usually disturbs the mind of the husband, is verified by the actual taking of the wife in adultery, or in acts very near to it and not after an interval, although his suspicion may be very strong. And so the laws which excuse a husband because of just and sudden anger cannot be extended to cover vengeance taken after an interval. For in the latter case neither the impetuosity nor the suddenness of the anger is proved, but the murder is said to be committed in cold blood. But if for the purpose of restraining the impetus of raging anger, lest the husband take vengeance on his own authority, he is not excused from the penalty of the *Lex Cornelia de Sicariis*, provided he kill his wife after an interval, how much less excusable will he be if, after choosing the way of public vengeance by imprisoning his wife and her pretended lover, he shall, after a long intervening time, slaughter her and her parents so brutally?

It should be added, for increasing his penalty, that as regards the unfortunate parents there was no just cause for killing them unless he wishes to consider as such the lawsuit which they brought for the nullification of the dowry contract because of the detection of her pretended birth. But this cause rather increases the offence to the most atrocious crime of *læsa majestas*, because of the utter security which the Pontifical Majesty wishes to afford to all litigants in the City. This point is found in the well-known decree of Alexander VI. where we read: "The inhumanity and savagery which thirsts for the death of others is horrible and detestable," and in the end we read: "In offence of the jurisdiction of his Divine Majesty, and to the injury of the Apostolic Authority." And, "They incur *ipso facto* the sentence of the crime of *læsa majestas*." And a little later: "And they may always be distrusted in all their good deeds by every one, and may be held as banditti and as infamous and unfit."

Very worthy of consideration, also, is that other aggravation of this inhuman slaughter, namely, that it was committed in their own home, which ought to be for each person the safest of refuges, according to the text. [Citations.] And Cicero elegantly says: "What is more sacred, what is more guarded by all religious feeling, than the home of each of our Citizens! Here are our altars, here are our hearths, here are our household gods, and here the sacred ceremonies of our religion are contained. This refuge is so sacred to all that it would be base for any one to be snatched hence." Much more is this true as regards the wretched wife, who was held in that place as a prison, with the approval also of the Abate Franceschini. And hence the public safekeeping may be said to be violated thereby, and the majesty of the Prince wounded, since the same reasoning is observed as regards a true and formal prison, and a prison assigned by the Prince, as the following assert. [Citations.]

Finally, we should also consider the aggravation of "prohibited arms," with which the crime was committed. This of itself demands the death penalty, even though the principal crime should otherwise be punished more mildly, as Sanfelicius advises, stating that it was so adjudged. [Citation.]

Giovanni Battista Bottini,
*Advocate of the Fisc and of the Apostolic Chamber.*

[File-title of Pamphlet 7.]

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*By the Most Illustrious and Most Reverend Lord Governor of the City in Criminal Cases :*

*ROMAN MURDER-CASE.*

*For Count Guido Franceschini and his Associates, Prisoners.*

*Summary.*

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*At Rome, in the type of the Reverend Apostolic Chamber,* 1698.

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# SUMMARY

[Pamphlet 7.]

*No. 1.—Letter of the Honourable Marzi-Medici, Governor of Arezzo.*

My most Illustrious and Dearly Beloved Master:

Your favoured letter of the twenty-fourth of last month has reached me, and I am exceedingly sorry for the uneasiness in which you hint you are placed by the maledictions which Signor Pietro Comparini and his wife have disseminated throughout Rome, concerning the ill-treatment they say they suffered in your home while staying in Arezzo. As your letter questions me for true information, I answer with all frankness, that both among the noble connection and in Count Guido's home they were treated with all respect and docorum. The cause of the first disturbance which sprang up between them and your mother and brothers was that Signora Violante, a few days after her arrival, presumed to domineer over the house and to keep the keys of everything, and in fact to turn out of house and home Signora Beatrice, your mother. With good reason, neither of the brothers was willing to consent thereto, and this gave occasion for the first insults and domestic broils. These afterwards increased when they saw that Signor Pietro had given over the company and conversation of the best people of the city, and had struck up acquaintance with the most vulgar. And with them he began to frequent daily all the taverns here. This cast discredit upon him, and was little for the good name of the Franceschini. Of much greater scandal were the many flights and petitions made by Guido's wife, their daughter, to Monsignor the Bishop. These were made for no other reason than that neither she nor her parents wished to stay any longer in Arezzo, but desired to return to Rome. When she had been rebuked by that most prudent Prelate, he always sent her home in his carriage. It is true that ever since the Comparini left this City until the present time the Signora has conducted

herself with much modesty and prudence. From this fact every one infers that the poor child was led to such excesses by her parents, as she herself declares to everybody. Now she detests even the memory of them. Therefore, she is getting back into the good opinion of every one, and especially of those ladies of the city who had ceased having anything to do with her. Finally, these same Comparini had taken away all her jewellery from the Signora, which I forced them to restore. Altogether, such and so great are the scandals to which they have given rise before the whole city in the lapse of the few months they have stayed here, that I write you only a few of them. I assure you that with them your brothers have had the patience of martyrs. Accordingly when I saw that they had become incorrigible, and were the talk of the town, and that they might force your brothers to commit some excess against them, for the maintenance of good discipline, I availed myself of the authority vested in me by His Serene Highness, and threatened them with prison and punishment unless they behaved themselves. After these threats, which they evidently merited and which might have overtaken them, they decided to go to Rome, as they did a little later, leaving behind them in this city a very bad reputation.

As for the rest, there is now in your home an utter quietude, and the Signora lives with exemplary prudence, detesting the ill example she had shown the ladies of this city, and she confesses freely that it was so commanded by her parents. In my judgment, it is the hand of God that has freed your family from such turbid heads. This is all I can here put down, out of much else there is to say about it. Therefore rest at ease, and believe me that the discredit has been entirely their own. I need only sign myself, with all my heart, to your most illustrious self,

Your most devoted and obliged servant,

VINCENZO MARZI-MEDICI.

AREZZO, *August* 2, 1694.

To Signor Abate Paolo Franceschini, Rome.

## No. 2.—*Deposition of Francesca.*

I will tell your Excellency why I have fled from the home of my husband. Here in Rome, three years ago, I was married by

my father and mother to the said Franceschini, and after I was engaged to him he stayed here in Rome for two months without consummating the marriage. Then with my father and my mother I was taken by my husband to Arezzo, because in the marriage contract it was agreed that my father and mother should go and live in Arezzo, as they did. After they had remained there four months, they departed and returned to Rome, because of the ill-treatment they suffered, at the hands not only of my husband, but of the others in his house.

I was left behind in Arezzo, and when about a year had passed after the consummation of the marriage, as I did not become pregnant my husband and my mother-in-law Beatrice began to turn against me, because I had no children. He said that because of me their house would die out and that he could not hope for an heir by me after a while; for by chance he had heard my father say, that during a girlhood sickness certain seeds had been given to me as medicine, which possibly hindered me from having children. For that reason I came to be continually mistreated by my husband and mother-in-law, though I answered that I was not to blame for that. Yet they continued always to threaten my life, and, without any real occasion, they sought every pretext to maltreat me.

Then my husband began to be jealous of me, and forbade me to show my face at the window. And to remove that occasion of jealousy I never showed my face save when it was absolutely necessary. So one day, while we were on the loggia, he said to me that I was staying up there to make love, without telling me with whom. I replied that these were mere pretexts, and that from that place one could see only the street, without looking into the windows of the houses; for the loggia was entirely on the roof.

And then because the Canon Caponsacchi, with other young men of the place, used to pass before our house and stop to talk with certain hussies, who were standing there in front, my husband began to fume with anger at me because the said Canon kept passing there as above, although I was not at all to blame. His suspicion increased all the more because, while we were in a great crowd at the play one evening, Canon Conti, the brother of the husband of my sister-in-law, threw me some confetti. My husband, who was near me, took offence at it—not against Conti, but against Caponsacchi, who was sitting by the side of the said Conti. Then because Conti frequented our house, as a relative, my husband took offence at him likewise; and this so much so

that I, being aware of it, retired to my room whenever he came to our house, that I might not have to take even more trouble; but my husband was not thereby appeased, but said that I did this as a trick, and that his suspicions of me were not removed. He began anew to torment me so, on account of Caponsacchi, that I was reduced to desperation and did not know what to say. Then to remove that occasion for his ill-treatment, I spoke to the said Caponsacchi one day as he was passing our house and begged him not to pass that way, that he might relieve me from all the distresses I suffered at the hands of my husband on that account. He replied that he did not know whence my husband had drawn such a suspicion, as he used to pass along there on other affairs, and that, in short, Guido could not stop his passing along the street. And although he promised me not to pass along there, he continued to do so. But I did not show my face at the window. Yet with all this my husband was not appeased, but continued to maltreat me and to threaten my life, and he said that he wished to kill me.

A.

She tells of her husband's threats because of her ardour for her lover.

At the time of the affair of the play told above, as soon as we had returned home, he pointed a pistol at my breast saying: "Oh, Christ! What hinders me from laying you out here? Let Caponsacchi look to it well, if you do not wish me to do so, and to kill you."

Furthermore at the beginning of these troubles, I went twice to Monsignor the Bishop, because he might have remedied it in some way; but this did no good, because of his relation with the house of my husband. And so as I was a stranger in that city and did not know how to free myself from these perils and abuses, and as I feared that if Guido did not slay me with weapons he might poison me, I planned to run away and go back to Rome to my father and mother. But as I did not know how to accomplish this, I went about a month later to confession to an Augustinian Father, whom they call Romano. I told him all my distresses, imploring him to write to my father in my name, as I do not know how to write, and to tell him that I was desperate, and must part from my husband and go to him in Rome. But I had no response.

B.

She died asserting that she did not know how to write.

Therefore, not knowing to whom I might turn to accomplish my desire, and thinking that no one in the place would assist

me, because of their relationship or friendship to my husband, I finally resolved to speak of it to the said Caponsacchi, because I had heard said that he was a resolute man. Accordingly, as he was passing one day before our house, at a time when my husband was out of the city, I called him and spoke to him from the stairs. I told him of the peril in which I found myself on his account, and begged him to bring me here to Rome, to my father and mother. He replied, however, that he did not wish to meddle at all in such an affair, as it would be thought ill of by the whole city, and all the more so as he was a friend of the house of my husband. But I implored him so much and told him it was the duty of a Christian to free from death a poor foreign woman. At last I induced him to promise me that he would accompany me as above. Then he told me he would secure the carriage, and when that had been arranged he would give me a signal by letting his handkerchief fall in passing before our house, as he had done before. But the next day went by, and although I stood at the blinds, he did not give the signal. When the day following had also passed, I spoke to him again as above, and complained to him that he had broken the word he had given me. And he excused himself, saying that he had not found a carriage in Arezzo. I answered him that, at any rate, he should have procured one from outside, as he had promised to do. Then the last Sunday of the past month, he went by our house again and made the signal with the handkerchief, as he had promised. And so I went to bed with my husband that evening, and when I had assured myself that he was asleep I arose from bed and clothed myself. I took some little things of my own, a little box with many trifles inside, and some money, I know not how much there was, from the strong-box. These were, moreover, my own, as is evident from the list of things and moneys made by the treasurer of Castelnuovo. Then I went downstairs at dawn, where I found Caponsacchi, and we went together to the Porta San Spirito. Outside of it stood a carriage with two horses and a driver, and when we had both entered the carriage we journeyed toward Rome, travelling night and day without stopping until we reached Castelnuovo, except for them to

C.

She confesses the strength and audacity of her lover.

D.

She confesses a conversation with her lover.

E.

She confesses a new conversation with her lover.

take refreshment and to change the horses. We arrived at dawn, and were there overtaken by my husband as I have told heretofore to your Honour. The said Caponsacchi is not related in any degree to my husband, but was certainly a friend.

F.

The lie about the arrival at Castelnuovo.

The said Caponsacchi, before the said affair, did not send me any letter, because I do not know how to read manuscript, and do not know how to write.

G.

The lover is not a relative of her husband.

Before the said affair, I did not at all send a letter of any sort to the said Caponsacchi.

H.

New lies, that she did not receive letters from her lover, and that she does not know how to write.

When again put under oath, she responded: While I was in Arezzo, I wrote at the instance of my husband to Abate Franceschini, my brother-in-law here in Rome. But as I did not know how to write, my husband wrote the letter with a pencil and then made me trace it with a pen and ink it. And he told me that his brother had much pleasure in receiving such a letter of mine, which had been written with my own hand. And he did this two or three times.

I.

Another lie, that she did not send letters to her lover.

K.

She does not know how to write, and her husband had traced the letter.

If your Honour should cause me to see one of the letters written by me as above, and sent to Abate Franceschini, I should clearly recognise it.

And when it was shown, etc., she responded: "I have seen and carefully examined the letter shown me by the order of your Honour, which begins—*Carissimo Sig. Cognato, sono con questa*—and ends *Francesca Comparini ne Franceschini*, and having examined it, it seems to me, but I cannot swear to it as the truth, that it is one of the letters written by me to Abate Franceschini, my brother-in-law, in conformity to my husband's wishes, etc.

And after a few intervening matters, etc., when questioned, etc., she replied: "I have never sent letters of any sort by the said Maria to any one."

L.

Another lie about the arrival at the tavern of Castelnuovo.

In all truth, I arrived at Castelnuovo at the blush of dawn.

We shut ourselves in there at the tavern of Castelnuovo for

the space of more than an hour. During that time we stayed in a room upstairs.

And after a few other matters, when questioned, she replied: "I did not go to sleep, nor lie down to rest in the tavern at Castelnuovo during the time I stopped there, as above."

M. New lies that she did not lie down to sleep at the Inn of Castelnuovo.

I know that your Honour tells me that the authorities pretend further that I slept all night in the abovesaid tavern of Castelnuovo in an upstairs room, in which Canon Caponsacchi also slept. And I say and respond that no one can truly say so, because I did not rest at all in the said tavern, and stopped there only for the time stated above.

[The letter of Pompilia to Abate Franceschini occurs both here and in the summary of the Defence. It is translated on pp. 56, 57.]

No. 4.—*A letter of Francesca written to Abate Franceschini.*

Outside: To Abate Paolo Franceschini, Rome; but inside:

My very dear Sir and Brother:

I have received the fan which you sent, which has been most welcome to me. I accept it with pleasure and thank you for it. It displeases me that, without reason, my parents wound the honour of our house. I for my part am well and am happy in not having them now to stir me to evil. I wish well to all our house, in the sacred fear of God. In fact you may well laugh at the maledictions of my parents. Command me, who reverence you from the bottom of my heart.

Your deeply obliged servant and sister-in-law,
FRANCESCA COMPARINI FRANCESCHINI.

AREZZO, *July* 19, 1694.

No. 5.—*The examination of Canon Caponsacchi.*

I had to go to Rome on my own business, and as I told my secret to Giovanni Battista Conti, a relative of Franceschini, who frequented the home of the latter, Francesca might have learned about it from the same Canon, although there was talk about

town of my coming to Rome, which was to follow soon. Hence a letter, sent to me by the said Francesca, was brought one day by a certain Maria, then a servant of the Franceschini. In it she told me that she had heard of my going to Rome, and that, as her husband wished to kill her, she had resolved to go to Rome to her father; and not knowing with whom she might intrust herself, she asked me to do her the service of accompanying her as above. I answered her that I was unwilling to do anything of that kind, or to expose myself to such a risk; and I sent her a reply by the same servant. I do not remember the precise time that she sent me the above letter. Thereafter, when I passed the house, she continued making the same request to me, by flinging from time to time from the window a note that repeated the request. And I replied to her, sending the response by the same servant, and telling her that I did not care to involve myself in such affairs. And therefore she finally cast me another note from the window, which, as I learned, was seen by a working-woman living across the street, whose name I do not know, and she carried it to the husband. The same servant was then commissioned to tell me that there had been a great commotion in the house because of it, and that the sister of Guido, who had been married into the house of Conti, had declared furthermore that that servant had carried the letter to me. She also told me that Guido said he was going to kill his wife in some way after a little while, and that he would also be avenged on me. Accordingly, with this purpose, to free myself from every difficulty and danger, and also to save from death the said Francesca, I resolved to leave for Rome and to accompany her thither, conducting her to her father. And so one evening—I do not remember the exact time—as I was passing their house I gave her a letter, which she drew up to the window with a string. In it I told her that to free her from death I would accompany her as above. Another evening she threw to me from the window a letter in which she renewed the above insistence, declaring to me that her husband was always threatening to kill her; she would therefore have to receive the favour of my company as above, of which I had spoken. And finally, the last Sunday of the past month of April, while I was going by their house and she was standing at the window, I told her that I had secured the carriage for early the following morning, and that I would have it await her at the gate of San Clemente. Accordingly, at about one o'clock in the morning, she came alone to the said gate. We entered the carriage and turned along outside of the city wall to go to the

gate of San Spirito, which is in the direction of Perugia. This carriage belonged to Agostino, tavern-keeper in Arezzo, and a driver, surnamed Venarino, the servant of the said Agostino, drove it. I had had him leave the city Sunday evening at the Ave Maria. Then we pursued our journey without stopping to spend the night anywhere, and we paused only as it was necessary for refreshing ourselves and changing horses, until we reached Castelnuovo on Tuesday evening, the last day of the said month of April. Then because Francesca said that she was suffering some pain, and that she did not have the fortitude to pursue the journey further without rest, she cast herself, still clothed, upon a bed in a chamber there, and I, likewise clothed, placed myself on another bed in the same chamber. I told the host to call us after three or four hours, for resuming our journey. But he did not call us, and the husband of the said Francesca arrived in the meantime, and had both of us arrested by the authorities, and from there we were taken to Rome.

I have not spoken in Arezzo to Francesca at other times than those I have recounted above to yourselves.

The husband of the said Francesca is not related to me in any degree whatsoever.

I have no profession at all, but am a Canon of the Pieve, of Santa Maria of Arezzo, and am merely a subdeacon.

E.

The lover is not related to Count Guido.

When I was imprisoned at Castelnuovo certain moneys, rings, and other matters were found, of which a memorandum was made by the authorities.

I have never written any letter to the said Francesca, except as stated by me above.

The letters sent to me as above by the said Francesca were burned by me in Arezzo.

Although in the prison of Castelnuovo, where I was placed, a diligent search was made by the authorities and also by the husband of the said Francesca, nothing at all was found there.

The said Francesca when leaving Arezzo carried with her a bundle of her own clothing and a box, in which she said there were some trinkets, but I did not see them. And she had it in a handkerchief with certain coins, which were then described at Castelnuovo by the Treasurer.

I do not know precisely by whom the letters sent to me by the said Francesca were written, but I suppose that they may have been written by her, but I do not know whether she knows how to write.

In the chamber of the inn at Castelnuovo where we stopped, as I said in my other examination, there were two beds. Only one of these was provided with sheets by the servant of the tavern, that it might serve for Signora Francesca. I did not have sheets placed on the other, because I did not care to undress myself. Nor did she undress herself, as I said in my other examination.

If I should see one of the letters written by me to Signora Francesca, I would know it very well.

I have seen and I do see very carefully these two letters which have been offered as evidence in this suit and have been shown to me by the order of your Honour. One of them begins *Adorata mia Signora, vorrei sapere*, etc., and ends *mi ha detto il Conti*. Having well considered this letter, I declare that it was not written by me, though the handwriting of the same has some resemblance to my own. I have also seen the other letter, which begins *Amatissima mia, Signora, Ricevo*, etc., and ends *questa mia*, and having well examined it I say that the same was not at all written by me, and is not in my handwriting. Furthermore, it has not the slightest resemblance to my handwriting.

I have never spoken in Arezzo to Signora Farncesca, except when I spoke to her at the window, as I said in my other examination.

I have never received other letters from the said Signora Francesca concerning other matters than her flight to Rome, as I have said in my other examinations.

I marvel that the Fisc pretends that, before the flight, several other love-letters had been sent to me by the said Signora Francesca; for she was a modest young woman and such actions would be out of keeping with her station and her birth. And therefore I declare that the abovesaid pretence is false and without foundation.

I turn back to say to your Honour that in the prison of Castelnuovo there was not found by the authorities anything whatsoever. And if your honour tells me that certain love-letters were found, which the Fisc pretends are those sent me by Signora Francesca, I say and respond that it is not at all true.

No. 6.—*Letter of the Most Reverend Bishop of Arezzo.*

Outside: To the Most Illustrious and Most Respected Signor Paolo Franceschini, Rome.

And inside:

My Most Illustrious and Respected Signor:

I understand why you desire to tell me about the quarrels which have arisen between Signor Guido, your brother, and Signor Comparini. And I cannot but pity you for the trouble you have had in a case so rare, and indeed so unprecedented. The Signora, your sister-in-law, had some recourse to me, but her great excitement, taken along with the excessive passion of her mother, revealed to me that the daughter had taken this step entirely by instigation. So I tried to make peace between them, thinking that when the instigations of the parents were removed she might be brought to right reason. I believed this the more readily, as she was of tender age. And the more she spoke, and the more she made outcry, that much the more had she been urged thereto by the instigation of her mother. And that she might not be excited even more, I had her taken home in my carriage twice. I have some knowledge of this because Signor Senator Marzi-Medici, who presides over the laic government of this town for our Most Serene Grand Duke, has told me all. And I need only add that I reaffirm what I have written with entire sincerity. Wishing for new chances to serve you, I affirm myself to you, Sir,

Your Most Obedient Servant,
THE RIGHT REVEREND BISHOP OF AREZZO.

AREZZO, *September* 15, 1694.

No. 7.—*Reciprocal love-letters.*

My dear Sir:

I do not multiply my assertions for the purpose of proving my love to you, because my resolution and your desert is enough proof of it. My affection no longer has any rein, etc. May grace be to him who gives grace.

My own Signor:

I tell you, do not be surprised if my mother was at the window, because she was looking at the one who was setting the sofa in

order. And therefore you can pass here without fear. When more at my leisure, I will write you some fine matters, etc. When they tell me anything, I will advise you of it.

My Adored Mirtillo, My own Life:

I pray you pardon me that I did not look at you yesterday when I was at the Cappucchini, because I saw that the two were watching to see if I would look at you. Therefore I suffered much pain in not being able to look at my Sun. But I saw mine own with my heart, in which I have you engraved. I remain as I am and shall be

Your devoted servant and faithful sweetheart,

AMARILLIS.

My well-beloved:

I have received your letter, which has given me much pain, etc., that the Jealous One might have seen the letters. And he did see them, but did not open them, because they were tied up together, and he supposed that they were other letters, and did not take them into his hand. This fellow is telling it because he would like you to get angry with me, etc. You ask me if I am of the same thought, and I tell you yes. If you have not changed, I am ready to do what I have told you, etc. Then soon, if they continue to drink red wine, I will tell you so. Whether you are of the same mind still, or have repented of it, I am content to do what you wish, etc. I remain as I have been

YOUR FAITHFUL SWEETHEART.

Most beloved Signor:

I do not know why you did not pass here yesterday evening; for I took my stand at the window and saw no one. I forsook the window because the Canon, my brother, was there. I left there to go to the other windows lest he might see me, etc. But you turned toward the door of your sweetheart, because there is the one adored by you. Conti has asked me for those octaves, which you gave me, etc. Therefore tell me if I must give them to him or still keep the precious verses for myself. And I remain as I am and shall be

Your faithful, yes, your most faithful Sweetheart,

AMARILLIS.

I forgot to tell you that the Signora my mother no longer has the fever, and is drinking wine, but by herself. Her wine,

however, is red like ours. Therefore tell me what to do, that I may do it. I close with sending you a million kisses. But I know that in this way they are not so dear as a few would be if you would give them to me. But those of the Signora are very dear to you, though I tell you that they are poisoned, etc. Be the scrupulous one with others that you have been with me. For you have reason for this with others, but you have no occasion for it with me, etc.

Most Cherished Narcissus:

This evening I received your letter, and it gives me great comfort to know that you are not angry, etc. I do not know when he will give it to me, but if he gives it to me I will give it to you. The Jealous One is away, but I shall still be here, and all the rest; but because my mother has not found a servant, etc., they have said that they will stay here a while. Therefore you will not pass [?] out of my mind because of my not seeing you for a while. But whoever loves from so good a heart as I do, will keep one in mind. I pray you pardon me if I make myself tedious by writing too often. Acknowledging myself as I am, I remain

YOUR DEVOTED SERVANT AND MOST FAITHFUL SWEETHEART.

Most beloved Signor:

If you could imagine with what haste I have written to you these two verses, etc. I met Signor Doctor, as usual. He asked me where I was going, and along the street, he asked me why I had written scornfully to him. I told him that he deserved even worse, because he had given evil deeds and good words; for he had said he was fond of me and that he wished him and the rest of them in Sovara, etc. He replied it did not come from this one, but on account of another gentleman whom I used to like, who was more gallant than he. I answered him that if that one was not more gallant than himself, he was at least more faithful, etc. Professing myself, as I have ever been faithful, etc.

My Adored and Revered Signor:

I wish by this letter of mine to excuse myself from my error in sealing the letter which I sent to Rome, etc. I tell you that they have not found any letter at all of mine, because I do not let them lie around the house, but give them to the flames. And while I keep them, I place them in my bosom. This is not

an excuse, why you should surmise [it to be] one of my letters; for I tell you that I give it place in my bosom, etc. Inasmuch as one of the family may be behind the curtain, as I believe, do not make any signal when you are under the windows. I shall be at the window this evening, or else at the blinds, and when I shall see you I will show myself at the window. But it is necessary to be prudent, that he may not see me. Because he has told me that if he sees me he will wish to do such things as not even Æneas, the Trojan, did. To avoid arousing his suspicion I will not stay there. But I pledge myself

YOUR MOST DEVOTED SERVANT.

My Longed-for Blessing:

If your saying that I do not love you, because you do not know me, is not an error, it is at least displeasing to me. Hear me, my dear: I am offended with you, because either you consider me blind or you do not consider me amiable. You cannot say of a truth that I do not love you, nor can you say truly that any one does love as much as I love you. Look into my eyes, and you will be astonished; for when bright with my tears they will be faithful mirrors to reveal to you that your face is copied there (in which an outline of it is made in the Sun), that your whiteness is snow in comparison with the Milky Way, that the Graces have directed your movements by their own hand, that Venus in fashioning you took the measure of your limbs with her own girdle. Ah yes, I love you so much that in one respect I would wish alone to love you in the world, because it seems to me that I could love you all in central Latium. I should like that all might love you, because you would see that all of them put together cannot love you as much as I alone do. My breast is envied by every other part of me, because it alone is able to love you. These are matters one cannot know by mere hearing; they are matters to render one excusable to any one else who does not believe it. But you are a cruel beauty; for if you see a face composed by the miracles of angels you should not consider it a lie if a heart is found fashioned by the miracles of love, etc. I leave you a thousand thousand kisses.

My well-beloved:

I pass by compliments, because I cannot match your very gallant verses, which are so far different from what I merit. You tell me that you wish to know what has happened in our house. I tell you that nothing has happened, so far as I can see, because

none of them have said anything to me—none of them. But Signor Guido seems rather well disposed toward me than otherwise, and therefore I cannot find out whether they are angry with me. Let my brother-in-law lock the door; he does it often, etc. If you do not wish to pass by here any more, I leave that to your own judgment, and I will suffer quietly the pains which are pleasing to you. Therefore I tell you that you may do as you wish. For as gold is refined in the fire, so love is refined by suffering. I can well say that I shall suffer pain at not seeing you as I have been accustomed, etc. With a loving kiss, I remain as I have ever been, your most sincere sweetheart and your most faithful slave.

I had quite forgotten to tell you that I stay in the same room as at first, and that Thursday evening I went to bed at eight o'clock, and so you did not hear me enter the room. I told the servant that she should make the signals agreed upon, etc.

Signor Guido returns Saturday morning and you may pass this evening at ten o'clock or sooner, when you shall see the light in the room, etc.

My well-beloved:

I received your letter, which was most pleasing to me, as are all the rest you have sent me, etc. I see that you like the Pastor Fido. But I would wish you to imitate him, and I will imitate another Vienna. I hear from her that you will want to come to see me at the Villa, etc. If I could only bring it about, I would more willingly be your wife than your servant. You tell me that Conti is unwilling to bring any more letters for you. But let me inform you that I am wheedling him, and I have the wits to bring it about that he will carry them to you; because I say two kind words to him and he is charmed and will do what I wish. You tell me that I shall let a cord down through the lattice, but you do not tell me what evening, etc. But I tell you that the Jealous One had gone to Sovara, if I might speak to you. But the Confessor is utterly unwilling, and for that reason I do not have you come here, because now the street door is no longer opened, but you might be able to open the back door, etc. But that Fate does not wish it, and you do not. I thank you for the kisses you send me, but if you yourself could give them to me, I would hold them dear. And I give you others in reply, as many millions as you have given to me.

Your Most Faithful Sweetheart.

I do not know what name to give myself, whether Vienna, or Amarillis, or Dorinda, or Lilla, but I wish to call myself Ariadne, for I believe I have had to be such. I wish to call myself such, only so you are not a Theseus, but a chaste Joseph, or a dear Narcissus, or an Ilago, or a Fedone. Adonis indeed took pity on Venus, but I am none such, but even a Medusa. Therefore I deserve, etc. If you have read Tasso, you will know who this was, etc.

My Beloved Idol:

I know of the affairs which have happened to you. I do not take it in bad part when you tell me that it is not possible to make my mother sleep, while she is ill and drinks no wine, and therefore cannot sleep. It may be in the next few days that she will get well. Then I will inform you of it, etc.

Your faithful Sweetheart,

AMARILLIS.

My Adored, Beloved, and Revered Heart:

I am confused at such praise, etc. You write to me oftener than you might about the Doctor. You offend me by saying that I will love him again. I tell you as sure as the Sun shall rise upon this world, I have not the heart for another such blow. But he who does ill, thinks ill, etc. As to what you wish to know about the wine, I tell you that it is red now, but I do not know how much longer it will be so, but I will let you know about it. Sending you a thousand and a thousand, and a million of kisses, I remain, etc.

Come this evening at seven o'clock, because I wish to speak to you, and cough when you are under the window.

AMARILLIS.

She is bursting because she cannot say, as you tell me here, that she is white as milk, and that you are darker than I. If I had been you, I might have called you ivory, as I do call you. Watch this evening lest it be the Jealous One, and not myself. Therefore I will cough, and if you do not hear me cough, do not move.

I let you know that Signor Guido is going out of the city, and will be gone several days. Therefore I pray you come this evening about seven o'clock. And when you are under the window cough and wait a little while, that I may not make a mistake. He goes away Monday morning, etc.

My dearest and Most Deserving Well-beloved:

I give the infinite thanks of Rosalinda, etc. I wish you to know that he makes me signals along the Via del Poggio, etc., and not because I wish to make proof of your love, which I know very well. You are as constant as myself, and therefore I do not wish to make these proofs, etc. So that you cannot say that I no longer love you, because all my good wishes for Signor Guido are turned to you, who deserve it.

AMARILLIS.

*Letter of the Lover.*

My adored Signora:

I wish to know whether you can leave Sunday evening, that is, to-morrow evening, for if you do not go away to-morrow evening, God knows when you shall be able to do so, because of the scarcity of carriages, owing to the fact that on Wednesday the Bishop departs with three carriages. Therefore, if you can go, as soon as you have read this letter of mine, return to the window and throw it to me as a sign that I may reserve a carriage beforehand, which may be secured from some one or other. If I secure the carriage to-morrow, in passing along there I will let fall my handkerchief one time only. Then for the rest, to-morrow evening I will wait from eight o'clock in the evening on as long as necessary. And as soon as you see that they are sound asleep, open the door for me, that I may help you make up your bundles and collect the money. Above all, try to put some into all their cups, and do not yourself drink it. And if by ill luck they shall find it out, and shall threaten you with death, open indeed the door, that I may die with you or free you from their hands. And praying God that he will make this design of ours turn out well, I declare myself as ever.

Your Most Faithful Servant and Lover,

MIRTILLO.

It is a very bad sign that the Jealous One seems pacified, and that he has said you were at the window. Because he will wish to find out in that way what you are doing at the window, and for what purpose you are there. For Conti has told me that now he is more jealous than at first, and that if he find out about anything, he will wish to avenge himself by putting us to death. He wishes to do the same to me, and that is what will happen. Here then has come at last the breaking of the chord.

Most Beloved Signora:

I have received your note full of those expressions (and then loving words follow). Be pleased to receive me into your bosom, in which I rest all my affections, etc. Consign to the ashes this note of mine.

*Another letter of Francesca.*

My Revered Signor:

Driven by the affection which I feel for you, I am forced to contradict what I sent you yesterday evening in that letter when I said I did not wish to tell you to come here. If you did not tell me then, I tell you now that I would wish you to come here this evening at the same hour as day before yesterday evening. I have indeed thought that towers are not moved by such light blows. But if you do [not?] wish to come here (that there may be no occasion for you to break your promise to some beloved lady or even though it may not be convenient), I do not wish to be the cause. Therefore if you wish to come here, pass along as soon as you have read this, etc.

No. 8.—*Decree of banishment of the lover.*

*Tuesday, September* 24, 1697.

Joseph Maria Caponsacchi, of Arezzo, for complicity in flight and running away of Francesca Comparini, and for carnal knowledge of the same, has been banished for three years to Civita Vecchia.

[File-title of Pamphlet 8.]

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*By the Most Illustrious and Most Reverend Lord Governor of the City in Criminal Cases :*

*ROMAN MURDER-CASE.*

*For Count Guido Franceschini and his Associates, Prisoners, against the Fisc.*

*New Memorial of the fact and law, together with a summary, by the Honourable Procurator of the Poor.*

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*At Rome, in the type of the Revcrend Apostolic Chamber,*
1698.

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# ROMANA HOMICIDIORUM

[Pamphlet 8.]

Most Illustrious and most Reverend Lord Governor:

The confession of Count Guido and his fellows as to the murder of Francesca, his wife, and of Pietro and Violante Comparini, his father-in-law and mother-in-law, falls far short of supporting the Fisc in demanding the ordinary death penalty. But, rather, it is remarkably in our favour in excluding that penalty. For there is no longer any doubt as to the cause of the murders, namely *causa honoris*. This at first was denied by the Fisc because of the presence of other causes, though these either were insufficient or were indirectly hurtful to the sense of honour. We will go over them hereafter, not "with unwashed hands." For a confession indeed should be received along with all its details, and is not to be divided according to a preconceived purpose. [Citations.]

This cause alone would be ground enough for demanding that he and his fellows be dealt with more mildly, if we bear in mind that *causa honoris* is quite sufficient for the moderating of this penalty. For we have proved in our other argument that a husband may kill his adulterous wife, even after an interval, without incurring the death penalty, wherever the adultery is really proved, as the Advocate of the Fisc concedes in his response. § *Solamque suspicionem.*

And in very truth, we have in our other plea adduced a great many decisions of the highest courts, wherefrom it is evident that the penalty has been diminished for husbands who have had their wives killed even by means of an assassin; and, on the contrary, no decision favourable to the Fisc is cited. Such an opinion is therefore to be accepted more readily, inasmuch as it is sanctioned by the greater number of authorities. And even although Farinacci and Rainaldi seem to take the other side, yet Farinacci, in his *Questions*, shows himself very much in doubt, as I have shown in my other plea; and in *cons.* 141, he shows that he is very changeable, since in *cons.* 66, *No.* 5, he has proved the contrary. Therefore, when his attention was called to this changeableness, in excusing himself, he asserted, in the

said *cons.* 141, under *No.* 16, that Beatrice, in behalf of whom he had written in *cons.* 66, had been beheaded; as if this kind of rigorous sentence should be followed in practice. And may this distinguished authority pardon me, but he responds inconsistently, having forgotten what he had written in the end of *cons.* 66: that is, that Beatrice was put to death not because she, after an interval, had commanded that one be put to death who was plotting against her honour, but because she did not prove her right to this latter exception, where he says: "So also there was strong hope for the sister Beatrice, if she had proved the excuse she offered, as she did not prove it."

But the Honourable Rainaldi, whose words and writings I venerate, in his *Observationes Criminales* (*cap.* 2, § 4, *No.* 156), after he asserts that some remission from the ordinary penalty may be hoped through the benignity of the Prince, does not decide the point by citing Gizzarellus and Giurba, who affirm that in justice the penalty should be decreased. But he goes back to what he had written (*cap.* 7 *in Rubrica sub No.* 60). where, however, he does not openly examine the point as to murder permitted for honour's sake. Otherwise he would go contrary to the general opinion of authorities, and to many decisions of the highest magistrates, that is to the common practice of the courts. [Citation.] "And this opinion is followed in practice, as I find in the event of such a fact the Neapolitan court has so decided." And concerning this same practice, Matthæus likewise bears witness. [Citation.]

Yet, as I have said, it would be enough to clear Guido of conviction if only his confession be taken in its entirety without subdivision. For greater completeness, however, we offer full proofs of the adultery, as brought out in the prosecution for the flight from home. The Fisc has attempted to attack these proofs lest he might have to lay down his arms; and the Achilles of his pretence is solely a preposterous cross-examination, which was not admitted into the suit for permanent record. It gives the word of a certain baseborn woman, formerly a servant in the home of the Accused, who was severely maltreated by Guido, by the Canon his brother, and by their mother. All too eagerly she narrates the ill-treatment suffered by Pietro and Violante, and by Francesca their daughter, and his wife, respectively, especially in the matter of their food, on account of which Pietro and Violante preferred to return to Rome.

Yet Guido by a written agreement had bound himself to furnish food to the abovesaid couple. And furthermore it is

claimed that the flight of Pompilia also was necessary, because she was being threatened with death; in order that her own base desire of violating her matrimonial fidelity may not be deduced therefrom.

If, however, we have any regard for the truth, the domestic affairs of the Accused were not so pinched, because they were more than enough, not merely for frugal, but even for lavish living. The theft of the moneys committed by Francesca in the act of flight demonstrates this. (See the prosecution for flight, pages 5, 63, and 92.)

The real and true cause which moved Pietro and his wife to go back to Rome was undoubtedly that the mother of Count Guido could not bear that the aforesaid Comparini should regulate family matters and should at their own pleasure dispose of everything looking toward the government of the home; this with greatest flagrancy and with none the less boldness they desired to do. Furthermore, Pietro took it ill that he was rebuked for leaving the company of the noble class and associating in taverns with the commonest persons in town, to the scandal of well-born men. And still more because he was compelled by the Governor of the City, under fear of imprisonment, to restore certain trinkets and gems of his daughter, which he had taken away, as Count Guido testified in his examination (pp. 96 and 97). And this is admirably proved by a letter of the same Governor recently presented by ourselves, which we give in Summary, No. 1.

With these statements the cross-examination of the same Francesca, when arrested in her flight, agrees; in it we nowhere read that she was maltreated, nor that she ever complained of that home of decent poverty. And yet it is very probable that, to put a good face upon her flight, she would have alleged the domestic want and home miseries, if she had ever suffered them.

We do not deny that disputes immediately arose between Francesca and her husband, and possibly he threatened her with death. But this was for another reason, namely that she should quit the illicit amours she had begun at the suggestion of her parents, and that she should live with evident chastity as is to be read expressly in her deposition (our Summary, No. 2, letter A).

It is verified from the fact that Francesca herself, in a letter written to Abate Franceschini, ingenuously confesses (Summary of the Fisc, No. 4, and our Summary, No. 3) that her parents indeed were sowing strife between the couple, and were urging her to have recourse to the Bishop under the false pretence of

ill-treatment; and day and night they kept instigating her to poison her husband, her brother, and mother-in-law, to burn the house, and what is still more awful, to win a lover and return to Rome in his company. Nor did she fail to obey them in several of these matters.

And in another letter written to the same Abate, and shown by us, and given in our Summary, No. 4, we read: "Not now having those here who urge me to evil."

Of no counter-effect is the response that the single characters of the said first letter had been previously marked out by Guido, and were afterward traced with a pen by herself, as she asserts in our Summary, No. 2, letter K. For proof of this statement she can bring no other evidence than that she does not know how to write. Summary, No. 2, letters B, H, and K.

In this, furthermore, she stands most clearly convicted of falsehood by her signature, which was recognised by herself at the command of the court while she was in prison, as we find in the prosecution for flight (p. 39). She also stands convicted of falsehood by the signature of her marriage agreement, concerning the truth of which it would be ill to doubt, both because there is along with it the signature of one of the Lord Cardinals, and because her handwriting was recognised by herself who had written it, at the demand of the notary, as is to be seen in the copy filed in the prosecution for flight, p. 132. And, furthermore, she is convicted by the priest with whom she fled, who asserts that more than once at night he has received letters which were either thrown out of the window by her or were sent by a servant; we give his deposition in our Summary, No. 5, letters A, B, C, and D. This is verified by the Fiscal witness (p. 108), where we read: "And she threw down a note, as I saw very clearly, and the Canon picked it up, and went away." There are, besides, the letters and sheets of paper filled with mutual love, found in the prison at Castelnuovo, where they themselves were overtaken. But it is utterly impossible that the characters of these were also marked by her husband, nor is it told by whom they were written; accordingly it is to be presumed that they were devised by herself, lest she might betray their forbidden love-intrigues, which they would have to hide with the greatest care. And I pray that the abovesaid letter be submitted to our eyes, and it will be clearly seen whether the characters were formed by one not knowing how to write, but forming them in ink in imitation of certain signs, or rather by the expert hand of the woman herself.

In the first place, the truth of the said letter of which we are speaking, we may gather from the letter of the Governor of Arezzo, in our Summary, No. 1, where we find: "Of much greater scandal were the flights and petitions made by the said wife, their daughter, to Monsignor the Bishop. These were made for no other reason than that neither she nor her parents wished to stay any longer in Arezzo, but desired to return to Rome. When she had been rebuked by that most prudent Prelate, he always sent her home in his carriage."

And this is likewise expressly deducible from another letter of the most reverend Bishop, which is given in the Summary, No. 6, where we read: "The more she made outcry, that much the more she had been urged thereto by the instigation of her mother." And after a few words: "I have some knowledge of this, because Senator Marzi-Medici, who presides over the secular government of this city for our Most Serene Grand Duke, has told me all."

It is verified still further by another letter of Signor Bartolommeo Albergotti, produced by the other side, which is given in the Summary of that side, No. 2, at the end. But the letter is not given in its entirety, for, where it speaks of the Secretary of the Bishop urging Count Guido and his mother, we should read there: "Not to maltreat the Signora for the affront offered him. After disputes enough of this kind, he took the Signora back home. And she declared that she was absolutely unwilling to live with Signora Beatrice and with the Canon Girolamo, her brother-in-law." And after a few other matters: "I pray yourself and Signora Violante to be willing to offer a remedy by instilling the wife with a tranquil peace, which will be for the quiet of all" (as we read in page 190).

This is also proved by the letter of the Abate produced on the other side (p. 182), where we read: "By Signor Guido, my brother, several offers have been made to him, but have not been accepted; and they insist that we force our mother and the Signor Canon to leave the house. But this shall never be, even if there do not follow both love and concord. I will never advise that."

And from the letter of Signor Romano, 188, later, where we read (cf. p. liv.): "I have known why she fled to Monsignor, and it was because she did not wish to live with the Canon and Beatrice," etc. (which words are not noted in the Summary of the Fisc, No. 2).

See for yourselves, therefore, that Francesca was not mal-

treated, although she so deserved because of her eager and indecent recourse without cause to the most reverend Bishop. Hence it is evident whether the Comparini left Arezzo and Francesca fled from home because of ill-treatment.

It remains now that we see—even granting this ill-treatment—what cause of fleeing from the home of her husband Francesca might have, or rather if her flight were not scandalous. This will not be difficult to make clear, if we will dwell for a little while upon the deposition of the same Francesca and upon the letters found in the said prison of Castelnuovo. These latter were produced by the Fisc in the prosecution for flight, though they were not given recognition. The lack of this acceptance cannot stand in our way, nor do I think it can be denied that they are of the same handwriting, if they are compared with the assured writing of the command of the court. Furthermore, as they contain love affairs, and the name of Guido himself, no sensible person will think that they were not written by them.

From her own deposition, it is evident that she was often abused for her sterility, and was terrified by threats of death on account of her love affairs with the said priest (as we see in the said Summary, No. 2, letter A). Nor was the cautious husband deceived, since her love increased day by day, while her conjugal affection indeed decreased just as her feeling for her lover increased. In the said letters (which are given in Summary, No. 7), that priest is called: Beloved, Adored, Mirtillus, My Soul, Most Dearly Beloved, Narcissus, My Eagerly Craved Blessing, Dearest Idol; and she signs herself "Thy faithful Sweetheart," and "Amarillis." And conversely, she is called by her lover "My Adored Signora." And in the details of those letters is expressed her intense love and the ardour with which that unfortunate one was burning for her lover, as is evident. Nor may I without shame refer to the very tender expressions of her love. But one of them, and possibly a second, I may not omit, that "from the claw, you may recognise the lion." Thus in letter 17, we read: "So that you cannot say that I no longer love you; because all my good wishes for Signor Guido are turning toward you, who deserve it." And this possibly is the reason why she refused to lie with her husband, as the said letter of Signor Albergotti points out, where he says: "The Signora has been melancholy, and two evenings after your departure she made a big disturbance, because she did not wish to go and sleep with Signor Guido, her husband, which displeases me very much."

In the first letter [we read]: "My affection no longer has any

rein"; in the fourth: "I am ready to do what I have told you"; in the tenth: "I will suffer quietly the pains which are pleasing to you." And it would be a long task and a disgusting one, to tell them over singly. For she was unwilling to conform herself to the chaste manners of Arezzo, accustomed as she was to living a freer life. This may be read in the letter of Abate Franceschini produced by the other side (page 179), and following, where we read:

"These occasions for bitterness, which have arisen between yourselves and Signor Guido, I do not wish to examine. I know enough to say that this has arisen from your wishing to turn the wife from what, according to the custom of the country, her husband both may and ought to do. Because over the wife God has given him authority, and likewise it is the general usage and the custom of the country. If yourself and Signor Pietro should stand in the way of this, you would do wrong, and it would be the duty of the husband to admonish his wife." And in another letter, p. 124, we read: "I cannot persuade myself that my mother and brothers would conduct themselves in such a way as to force her to have such recourse." And after a few words we read: "And know well that what I have endeavoured by my words to urge upon Signora Francesca, Signor Pietro, and yourself is only out of pure zeal for the honour of your house and of yourselves."

On the other hand, the same thing is to be drawn from the letter of the said priest (as we read in letter 20): "I have received your notes, full of those expressions [of love], etc. Be pleased to receive me into your bosom, in which I rest all my affections." And the letters which have reference to the flight give clear proof of the mutual exchange of affection, as is well proved by the effect that followed. Thus, in letter 18, we read: "I wish to know whether you can leave Sunday evening, that is to-morrow evening; for if you do not go away to-morrow evening, God knows when you will go, because of the scarcity of carriages." And after a few intervening words: "As soon as you see that they are sound asleep, open the door for me, so that I may help you make up your bundles and collect the money." And after a few more words: "Praying God that he will make this design of ours turn out well."

And letter 19 of the same lover, in which proofs of love are given by no means obscurely, also shows us of what quality those loves were, where we read: "That the Jealous One seems pacified, and that he has said you were at the window, is a very

bad sign; because he will wish to find out in that way what you do at the window, and for what purpose you are there. For [Conti] has told me that now he is more jealous than at first, and that if he find out anything he will wish to avenge himself by putting you to death and will wish to find means to do the same to me."

It is proved still further that the wretched Accused complained bitterly that she was not content merely with a single lover at Arezzo, but that she has been defiled by many suitors, so that she multiplied the disgraces to his house (page 98), and following. We also read clearly in the seventh letter:

"I met Signor Doctor, as usual. He asked me where I was going, and along the street he asked me why I had written scornfully to him. I told him that he deserved even worse, because he had given evil deeds and good words; for he had said he was fond of me, that he wished him and the rest of them 'in Sovara.'"

And in the thirteenth:

"As to the Doctor, you offend me by saying that I will love him again. I tell you, as sure as the Sun shall rise, I have not the heart for another such blow."

It is therefore quite evident whether Francesca had an honest cause for leaving the home of her husband, or whether she was not rather impelled by the more urgent spurs of love. It may be said now that these letters were sent for a good purpose, that the priest might be induced to accompany her so that she might shun the danger of death, since she found herself therein without any just cause. And it may be said that she could have kept her modesty uninjured in the company of her lover. But since without doubt the amorous expressions used in the letters do not show chastity of mind and a modest disposition, and as just cause for flight is lacking, the veil wherewith her viciousness tried to hide itself is destroyed. I acknowledge that Judith, who was an entirely chaste widow, of decorous appearance and fine looking in many ways, made advances toward a very licentious enemy; but this was for the purpose of accomplishing a pious work, namely, to liberate her own native land. She was provided not with lascivious letters, but with earnest words, the unimpaired modesty of which it were evil to doubt, since she was moved by the breath of the Holy Spirit. But to-day, how very few Judiths are found; yet the daughters of Lot are multiplied, who when they could not preserve their sense of shame even in their father's company made him drunken with

wine, lest he, when sober, would deny them because they were sinning weakly, so that, when out of his own mind, he was involuntarily polluted with nefarious incest. (Genesis, chapter 29.) Do we believe that a girl who was dying for love, and who burned most ardently for the company of the loving Cupid and her lover, would keep safe her modesty during a long journey? Which modesty I only wish she had preserved in the home of her husband!

And even if Guido had imposed upon her, without due reason, a just fear of death, she should not therefore have increased his suspicion of base and lustful acquaintanceship by choosing as her companion in flight that priest whom her husband had suspected; for Caponsacchi was not at all related to herself or her husband, as each of them confesses in our Summary, No. 2, letter G, and No. 5, letter E. Thus she would prove her dishonour. But while still guarding carefully her matronly shame, she might either have entered some monastery with the help of some church official, if she had used truth and not falsehoods; or she might have had recourse to the civil governor, who, after examining all things, would have afforded her a safe return to the City in company with honest men and women; or he might have placed her in the home of some honest matron, with due safeguards. But even if she had no faith in either of these, and was determined to go back to Rome, she might at least have entered upon the journey with one of the servants.

Likewise, the other excuse for putting an honest face on the illicit amour falls to the ground—namely, that concerning the aforesaid flight another priest, the brother-in-law of the sister-in-law of the said Francesca, was informed. For if the above-said letters are read through carefully, the suspicion of illicit correspondence with his connivance is very greatly increased. We read in letter 11:

"You tell me that [Conti] is unwilling to bring letters for you. But let me inform you that I am wheedling him; and I have the wits to bring it about that he will carry them for you. Because I say two kind words to him, and he is charmed and will do what I wish."

And in letter 19 of the lover:

"For he has told me that now he is more jealous than at first, and that if he finds out about anything, he will wish to avenge himself."

But who would judge that we can deduce from the said words that their mutual love was chaste, because another priest was

aware of it. I know that for Francesca to show herself at the window at the hiss of her lover in company with the other priest does not savour well. Of this a witness for the Fisc, in the prosecution for flight, gives oath (pp. 107-8). Therefore, not without cause did Count Guido have suspicion also of the other priest, as Francesca herself asserted in her deposition in our Summary, No. 2, before letter A.

These [two] things are taken as proved therefore: [first] that it is not established that Francesca was threatened with death without just and legitimate cause, and [second] that a most suspicious correspondence with her lover is established. It will follow that the threats were offered by her husband to preserve his honour, and so it was in the power of Francesca to free herself from these threats without scandal, without flight, and without shame, by living chastely. She, however, was too prone to the tickling of the flesh, and had deferred all things to the fulfilling of her vicious desire, without respect to her violation of conjugal faith. It is all too foolish to doubt her utter recklessness, since it is manifestly evident from matters brought forward in the prosecution for flight, and especially from the reciprocal love between the lovers, etc. It is also clear from the letters containing such very tender expressions. [Citations.]

As to the entry and egress of the said priest from the home of Francesca at a suspicious time, a witness for the prosecution testifies (p. 107): "At the sound of the Ave Maria, while I was at the same window, I saw the door of the said Signori Franceschini open very softly, and from it passed the said Signor, etc. He pulled the door to as he went out, but did not in fact close it, and therefrom, after a little while, I saw the said Signora Francesca Pompilia, with a light in her hand, who closed the said door." It is also proved from letter 11, where we read: "For that reason, I do not have you come here because now the street-door is no longer opened, but you might be able to open the back-door," etc. This of itself is enough to prove adultery, even when trial is being made to demand punishment therefore. [Citations.]

Her leaning from the window at a hiss, day and night, and their mutual nods, concerning which a witness testifies, p. 108, are quite enough to prove carnal communication. [Citations.]

Then there is the manner in which they prepared for the flight, which includes, as I may say, a show of treachery, as is to be understood from the letter of the priest, No. 18, where [we read]: "Above all, try to put some into all their cups, but do not

yourself drink it." For in seeking an opportunity to mingle an opiate for them, he was inquiring what coloured wine they were drinking in the home, lest, as I suppose, the colour of it when altered by the drug mixed therewith might betray their plots. So in letter 4, where we read: "Then, further, if they continue to drink the red wine I will tell you so." In No. 12: "When you tell me that it is not possible to make my mother sleep, while she is ill, and drinks no wine." And in letter 13: "As to what you wish to know about the wine, I tell you that it is red now, but I do not know how much longer it will be so; but I will let you know about it."

Still further this most wretched wife was moved with a burning ardour for the said priest, as is noted in letters 5 and 21; this is usually conceived by lovers only. Therefore, since it is undeniable that the carnal love was reciprocal between them, I think it can not be doubted that her departure from the home of her husband and their association through a long journey, prove their adultery. [Citations.]

In the progress of the journey kisses were given on both sides; of this the witness for the prosecution testifies; but I do not find in the evidence that he saw these at night, as is supposed by the other side; for page 100 asserts "I only saw that at times they kissed each other." And these kisses Francesca so strongly desired to give and to receive likewise, that in letter 11 [we read]: "I thank you for the kisses you send me; but if yourself could give them to me, I would hold them dear. I give you as many million more." And in letter 10: "And giving you an amorous kiss." And in 5: "I say good-bye with a million kisses." And here and there in the other letters. These render the adultery not at all doubtful, so much so that there are not wanting authorities who assert that when the kiss is proved the adultery may be said to be proved. [Citations.]

Therefore, unless I am very much mistaken, no one who knew what we have recounted could be found so senseless and so weak-minded as not to believe strongly that when they were found in the inn her matronly shame had been tampered with, either during the journey or at night while they were taking their rest, or more probably in the morning while they were enjoying each other's society.

But passing over the fact that the priest was clothed in laic garb (pp. 4 and 100), which affords no small weight for the proof of the adultery, all further doubts are removed, since they arrived together at the tavern of Castelnuovo at half-past seven

at night, as three witnesses for the prosecution agree in swearing (pp. 44, 47, 49). And although two beds were in the chamber, only one indeed did the said priest wish to have made ready, and all night long, behind closed doors, he rested alone with her (if lovers can rest); from this the adultery is proved without doubt. [Citations.]

This proof indeed becomes all the stronger from the lie of Francesca, who asserts that they arrived at the said tavern at dawn (Summary, No. 2, letters F and L). For if no evil had been done she would not have attempted to hide the truth. [Citation.]

Finally, the sentence or decree of this Tribunal, which is given in Summary, No. 8, where the said priest is condemned for carnal knowledge of Francesca, removes all doubt; because the adultery is thereby rendered infamous, as was proved in our other argument. And though it is asserted that it was in the minds of the Lords Judges to modify this sentence and to add "for pretended carnal knowledge," yet it never was thus modified. And yet such modification would not have stood in the way after it had reached the ears of the luckless husband that the adultery of his wife had been made manifest and notorious and had been confirmed by the Judges' decree.

But certainly, even if we are cut off from this proof, their carnal communication remains more than sufficiently proved for our purpose; for we are arguing not for the infliction of the penalty of adultery, but we have deduced the adultery for exclusion of a penalty. [Citations.] For it is quite customary that, for a civil purpose, such as divorce or loss of dowry, adultery is abundantly proved by circumstantial evidence. [Citations].

Nor is it of consequence that some of the stronger proofs are proved by single witnesses; for we are arguing to establish dishonesty and adultery in kind; not for the purpose of condemning the adulteress, but for the defence of the accused.

And the reason is very evident, because to excuse a husband from the murder of his adulterous wife after an interval, an exact proof of the adultery is not required, but strong suspicion of adultery is quite abundant, as Sanfelicius testifies it was decided (*dec.* 337, *num.* 13). But we are upon firmer grounds, because we not only have strong suspicions drawn from single witnesses, but other finely proved grounds, yes, the clearest of proofs, deduced by the Prosecution.

Very little does it stand in the way of this proof of her guilt

that Francesca, when near to death, tried to exculpate herself and her lover by asserting that there had been no sin between them; for this kind of exculpation, which is all too much a matter of pretence, might help her companion just as theretofore she had brought blame upon him; and by no other proof might his inculpation have been removed. This would indeed aid her fellow, but not herself. But since she stands convicted by the abovesaid proofs of having broken her matrimonial faith, it would be absurd that an exculpation made that she might seem to die an honest woman, should be of such efficiency as to destroy the proofs of her baseness. [Citations.] And what is more horrible, that from the said exculpation, her murderer might be the more severely punished.

I have faith, and this helps me to hope, that her soul rests in eternal safety, by divine aid, since she had time to hate her previous life. But no man of sense could praise her testamentary disposition, in which she appointed as her sole heir her son, who, as I hear, was but just born and hence innocent, and who had been hidden away from his father, and which appointed as residuary legatee a stranger joined by no bond of relationship.

From these considerations, therefore, it is plain that the adultery of Francesca is fully proved. Hence according to the opinion of the Fisc, her murder, even if committed after an interval, is not to be expiated by the death penalty; not only because of the justly conceived grievance, but because the injury to the honour always keeps its strength, according to the sentiment of Virgil in the *Æneid*, Book I: "Keeping an eternal wound within the breast."

It is of no force in response to this that he did not kill his wife and the adulterer, whom he had overtaken at the inn of Castelnuovo, but that he merely saw to their imprisonment; as if that, after his recourse to the judge, he could not with his own hand avenge his honour.

For we deny in the face of all heaven that he could have killed either of them, because he was worn out by the rapid journey, and was so perturbed by the agitation of his mind, that he was seized by a fever. And furthermore he had heard that the said priest was armed with firearms, as he asserted in the prosecution for flight, at a time when his word cannot be suspected, because the murders had not yet been committed (pp. 76 and 77). It is also true that the priest was a terrible fellow, according to the witness for the prosecution (p. 167), and as Francesca herself confesses. Elsewhere, the Accused speaks of the taking away

of an arquebus pointed at the officers, as he himself asserts (p. 71). And, furthermore, Caponsacchi was all too prompt and too much disposed to resisting, as we read in letter 18. There, in speaking of the opiate to be given to the domestics, he adds: "If by ill luck they shall find it out and shall threaten you with death, open the door, that I may die with you, or free you from their hands." And the wife, indeed, was unterrified, full of threatening, angered, and even furious, as the outcome proved; since when captured by the posse of the Ecclesiastical Court, she dared in the very presence of the officers and other witnesses to rush upon her husband with drawn sword. And she would easily have killed him, if she had not been hindred (p. 50). He, indeed, weak, as he is, and of insufficient strength, could not have taken vengeance by killing both, or either of them, provided as he was with only a traveller's sword. Hence, as he was not able to kill them, he saw to their imprisonment in the confusion of his mind, in order that he might prevent the continuation of his disgrace, and thus might hinder their future adultery.

But, indeed, even if he could have killed them, and did not do so, he would be praiseworthy; for up to that time the adultery had not been made notorious by the sentence of the judge, and only strong suspicions of it were urging him on.

But as for the recourse to the judge, whereby it can be claimed that he renounced the right to kill his adulterous wife, which we deny, I pray you note that the Tribunal acted prudently in placing Francesca in the Monastery, that she might be kept more decently than in a prison. Then when it received the attestation of the physician as to her condition, lest she might be kept there destitute of necessary aids, and so might undergo punishment in the very course of events (which is everywhere avoided), after obtaining the consent of Abate Franceschini, brother of the Accused, the court permitted her to be placed in the home of her parents with the warning to keep that home as a prison.

But I cannot commend any one, whoever he may be, who tried to get Francesca from the Monastery under the false pretence of ill health, since he could legitimately and with more decency have succeeded in his intent by laying bare the truth, namely her pregnancy. But this was done for no other reasons than these: either that the son might be hidden away from Count Guido, since the law presumes that he was born of his legitimate father, although his wife had shown herself incontinent; or else Francesca, believing that the child was conceived

of some one else, possibly was trying to hide from her husband the fact of her pregnancy.

And now in the meantime, let it please my Most Illustrious Lord to turn his eyes toward Arezzo and for a little while to think of Count Guido stained with infamy, when the decree of condemnation for adultery reached his ears. The adulteress was still unpunished, and he was ignorant of the fact that she could not be punished, owing to her supposed ill health, and that during her pregnancy, which she had so carefully hidden from him, shew as unsuited to the vengeance of the sword. Furthermore, when he saw that Francesca had gone back to that very suspicious home of Pietro and Violante, who had instilled Francesca with dishonesty, had repudiated her, and had professed that she was the daughter of a harlot, he lost all patience, as is evident from the deposition of Blasio (p. 318), where we read: "But still further, she had been received back into the home, after she ran away from Guido, although the latter had put her in a Monastery." This change drove to desperation her luckless husband, who was at least an honourable man. Therefore his recourse to the judge ought not to increase the penalty for him.

We do not deny that Abate Franceschini had given consent to the removal of Francesca to the home of Pietro and Violante (in order that we may yield to our respect for my Lord Advocate of the Fisc), but only on verbal representation, for I have not been able to see it in writing. But, for our proposition, this does not affect Count Guido, since it is not made clear that he was informed of such consent, and thus far the Fisc merely presumes that he had been informed by Abate Franceschini, his brother, of this consent. [Citation.]

We are compelled to affirm that this knowledge is not to be presumed as is shown below, or at the very worst there is present only presumptive knowledge. And I do not think that on this kind of merely presumptive knowledge the death penalty can be demanded, nor can Count Guido be condemned, since he has neither confessed nor been convicted of such knowledge: chapter *nos in quemquam*, where we read: "We cannot inflict sentence upon any one unless he is either convicted or has confessed of his own accord."

Indeed, what if Count Guido had acknowledged that he had written the consent furnished by the Abate, his brother, since it had no special authorisation for that particular matter; nor a general authorisation to conduct litigation, but only to receive moneys taken from himself by Francesca, as is to be seen (p. 136).

By exceeding the limit of his power, Abate Paolo would have exasperated the mind of Guido; for the luckless man was already burning so with rage at the temerity of Francesca, Pietro, and Violante, that he was almost driven, I might say, to taking vengeance. He had put this off as long as he had any hope that he might have the marriage annulled because of mistake concerning the person married. For he was ignorant of the point of Canon Law that error as to the nature of the person contracted does not render a marriage null, but only an error as to the individual. [Citation.]

Nor does it amount to anything that Francesca, at the time she was killed, was under surety to keep the home as a prison, as if she were resting in the custody of the Prince. For, however that may be, even if the Accused had killed Francesca to the offence of the Prince, yet since he wished to recover his honour and to remove with her blood the unjust stains upon his reputation, for this particular reason the aforesaid custody is not to be given attention, nor does it increase the crime; as in the more extreme case of one injuring a person having safe-conduct from the Prince, Farinacci affirms in making a distinction [Citation] where knowledge thereof is not to be presumed.

Furthermore, when we speak of custody we should understand it to apply to public custody and not to a private home as was proved in our other argument. Nor is the response enough that this would hold good in the one under custody, but not concerning the custodian, Violante; for I do not know any probable distinction between the two, since both cases may suffice for escaping the penalty; nor is any stronger reason to be found for the one than for the other. And indeed a third case would be more worthy of excuse, of one who broke this kind of custody, when knowledge thereof was not proved. Because such an offence might arise under such custody, just as one who had killed a person under bann, but ignorant of that bann, excused himself. [Citations.]

If therefore Count Guido is not to be punished for murder of his wife, for the same reason he cannot be punished for the murder of Pietro and Violante, because these murders were committed for the same cause, *causa honoris*. For at their instigation, Francesca found her lover, and still more, in order that they might disgrace Guido, they did not blush to declare that Francesca had been conceived illegitimately, and had been born of a harlot. This greatly blackens the honour of an entire house, as Gratian observes [Citation]; for the daughters of such

are usually like their mothers. Then also, as I have said above, the Accused burned with anger when he had notice of the return of Francesca to their home (p. 318), and the following. And Alexander proves this in his confession where he says (p. 646): "So that he had to kill his wife, his mother-in-law, and his father-in-law: because the said mother-in-law and father-in-law had a hand in making their daughter do evil, and had acted as ruffians to him." This following fact makes it all the clearer, because on the fatal evening when they were slain, at the knock on the door, and as soon as Violante heard the much beloved name of the lover, straightway she opened it. And thus she showed, unless I am mistaken, what removes all doubt that Pietro and Violante were not at all offended with the love affairs of their daughter and her lover.

It is all one, because we are compelled to acknowledge either [first] that the Comparini had done new injury to his honour by receiving her into their home after they had declared that she was not their daughter, and after her adultery was clearly manifest, and hence there should be departure from the ordinary penalty. [Citation.] For just indignation, when once conceived, always oppresses the heart and urges one to take vengeance. [Citation.]

Or else [secondly] we must acknowledge a cause of just anger continued, and indeed was increased, which is quite enough foundation for asserting that the murders were committed incontinently. [Citations.]

Since, then, from the confession of Count Guido as well as from that of his associates, and since from so very many proofs brought forward in the trial, it is evident that Guido was moved to kill them by his sense of injured honour, in vain does the Fisc pretend that for some other remote reason he committed the crimes. For, to tell the truth, I find no other cause which does not touch and wound the honour, if we only bear in mind what Guido has said in the trial (pp. 96 and 97): namely, that the Comparini had arranged the flight of Francesca and had plotted against his life. This alone would be enough to free him from the ordinary penalty. Bertazzolus and Grammaticus [Citation], testify that a man was punished more mildly who had had one who threatened him killed, though the threats were not clearly proved. [Citations.] "And the death which he had threatened fell upon himself, and what he planned he incurred," and also: "There is no doubt that one who had gone with the intention of inflicting death seems to have been slain justly."

Another cause of the murder alleged by the Fisc is the lawsuit brought to annul the promise of dowry. Upon this point a complete and a very skilful examination was made by the other side, and because of this it was pretended that he had incurred the penalties of the Alexandrian Constitution and of the Banns. But this pretence in fact soon vanishes. For if we look into it well we shall find, without difficulty, that a cause of this kind is no less offensive to the sense of honour. For the ground on which Pietro had attempted to free himself from the obligation to furnish the promised dowry was this solely: that Francesca was not his own daughter, but the child of an unknown father and of a harlot. Every man, however, well knows whether this kind of a declaration would wound the reputation of a nobleman.

Whether or not a pretence of this kind could have found a place for itself before we had the confessions of Count Guido and his companions, as I have said above (for then the Fisc might have been in doubt how Guido could be moved to kill her), yet thereafter it was clear from the confessions of them all that the sense of injured honour had given him the impulse, and had even compelled him to the killing, as Count Guido asserts (p. 678) where we read: "To inflict wounds upon them, inasmuch as they had injured my honour, which is the chief thing." Vain is it to inquire whether he had killed them for some other reason, because, as it was clearly for honour's sake, the Fisc never could prove that they were killed on account of the lawsuit, and not on account of honour, as is required for the incurring of the penalty of the aforesaid Bull. [Citation.]

These statements are apt also as regards the murder of Francesca, who had sought a divorce. For if she had made pretence of being separated from him for any other reason, and if her dishonour were not perfectly clear, then indeed there might be room for the Alexandrian Constitution. But since wounded honour gave occasion for the murder, we are far beyond the conditions of the Alexandrian Constitution. Otherwise a very fine way would be found for wives to act the prostitute with impunity. For if it were possible, after adultery was admitted, to bring suit for divorce, they would find a safe refuge to escape the hands of justly angered husbands, and would be rendered safe by the protection of the said Bull even though the divorce was not obtained and though the husbands had been offended because of their dishonour.

But still less can such capital punishment be inflicted upon Guido on the pretext that he assembled armed men, contrary

to the rule of the Apostolic Constitutions and Banns. For whenever the question is whether a husband may assemble men to kill his adulterous wife, we are still beyond the conditions of the Constitutions; for they have place whenever men are assembled for an indeterminate crime, and crime does not follow; then indeed the provisions of the Bull are applicable. But whenever men are joined together to commit crimes, and these actually follow, attention is directed to the end for which the men had been assembled, and the punishment for that is pronounced, nor is there any further inquiry concerning the beginning (that is, the assembling), as I have proved in my other argument. And I now add another citation [Citations], where after the question was disputed, he asserts: "But certainly, notwithstanding what has been said above, in the current case, I do not believe there should be any departure from the decision of so many men, whom we may well believe have considered and written the entire matter with maturity and prudence for Our Most Sacred Lord Clement VIII." And at the end of this addition, it is testified that the Apostolic Chamber had so decided it at the order of the said Pope. [Citation.]

This is also proved by the Banns of my Most Illustrious Lord Governor, chapter 82, where they impose a penalty for assembling men for an evil end, if the evil end may not have followed. But they decide nothing when the crime for which the men had been assembled had been put into execution, because in this case the penalties for assembling cease and only the penalty for the crime committed is inflicted, as was said above.

And that the assembling of men for the purpose of recovering one's reputation does not fall under the penalties of the Apostolic Constitutions (see *Farinaccius, cons.* 65, *No.* 66).

Finally, the matter of carrying prohibited arms is still left for consideration. Even if some authorities have asserted that this is not to be confounded with the principal crime, yet the contrary opinion is held by the majority; for the purpose is to be considered, which the delinquent chiefly had in mind. So Bartolo holds in our very circumstances. [Citations.] And on the point that one killing for honour's sake, with prohibited arms, is still to be punished more mildly, Matthæus testifies that it has been so judged. [Citation.]

This also holds good in the more extreme case of several crimes, which can easily be committed separately and which tend toward different ends; yet, if they are committed at the

same time and for the same end, the punishment only for the crime which was chiefly in mind is imposed. Thus, if one wishing to commit theft climb over the walls of the city, even though he could commit that deed without the crime of crossing the wall (which is a very grave crime, according to Farinaccius, *quaest.* 20, *No.* 146), even then only a single penalty, namely that for theft, is inflicted, as the one chiefly in mind; and this is a little harsher than that for crossing the walls of the city, but is not of utmost severity. [Citations.]

Nor does it escape my notice that the Banns of our Most Illustrious Lord Governor, chapter 8, seem to settle the question by deciding that the punishment for carrying arms ought not to be confounded with punishment for the crime committed therewith. Nor do I fail to see, still further, that these Banns do not include one of the companions, who was a foreigner and not of that district. But since by common law these Banns receive a passive interpretation whenever arms are not borne for an ill end, and then some crime is committed with them (because the delinquent did not have in mind the crime which he committed), he is punished for both crimes, because at divers times he committed different crimes. But when any one bears prohibited arms with the purpose of murder, and then commits the murder, the chief crime of homicide, in view of which he bore the arms, is considered and the penalty for murder is inflicted, but not that for carrying the arms. [Citations.]

I beg you note that this crime in question is made important from the fact that those three who had no fear of ill, but who ought by all means to have feared, were slain, and not because of the kind of arms with which they were slain. The number of the victims, and not the instrument of their death, excited astonishment, and it would have been the very same if they had been slain with the longest of swords, or with sticks, or with stones. Therefore it would indeed be a very hard matter that the Fisc should be aflame over these murders, and not being able to demand the death penalty for them, should demand it for the carrying of arms.

But beside this, Count Guido denies expressly that he owned, carried, or kept arms of unlawful measure. And although it is asserted by the four associates that at the time of the murders Guido had in his hands a short knife, and had given the same kind of arms to his companions, yet these could not doom him to the ordinary penalty. Thus Farinaccius and others affirm

after this matter has been well discussed and the contrary opinion confuted. [Citations.]

Nor does he deny that he had on his person a dagger which was entirely lawful. But he did not have it with him at the murder, nor did he carry it for the murder, but only to defend himself if he should find in the aforesaid home outsiders ready to use force against him. And that was permissible to him; for there is ample right to bear arms of this kind throughout the Ecclesiastical State, and (I may boldly add) even in the very City. Because no mention is made of the City, although some places are excepted; according to that very true axiom: "The exception proves the rule in what is not excepted." [Citations.]

And he could the more readily believe that it was permissible for him to do so, because he had enemies in the city who threatened him there and made plots against him, as Guido himself says; and therefore the bearing of arms of this kind was more necessary here than elsewhere.

Nor is it to the point that, because it is claimed he had killed with forethought, the privilege of bearing this kind of arms should not be granted him. For aside from what is said above and in the other argument establishing the fact that the aforesaid crimes were "for honour's sake," they cannot be said to be committed "after an interval." The objection might hold good if he had used the arms in the murder, but as this is not established, it does not seem possible to deny him the right to carry the arms. In any case, although strictly speaking he could be said to have done the killing when armed with the said arms, yet he should not be punished with the extreme penalty of death. In *Caballus, case* 90, *No.* 7: "Yet in fact in these cases, I have never seen the death penalty follow, but by grace it is commuted to a milder penalty."

Finally, he cannot be said to have incurred the penalty for prohibited arms from the fact that he was present at the murders committed by his associates with such arms; because the penalty of this kind which is due to one furnishing the said arms does not extend to the helpers and assistants. [Citations.]

I do not speak of Domenico and Francesco, because these last two, as foreigners, are not bound by our Banns. But all matters fight for all of them, and every single ground for the diminution of the punishment, which favours Count Guido, also favours them all; since accessories are not to be judged on different grounds from the principal, as I have shown in my other argument. There I cited, not the authority of one or another

doctor singly, but the decisions of the highest magistrates. Clar also testifies that this opinion has been observed in actual practice. (§ *Homicidium, sub No.* 51).

But I earnestly beg that my Most Illustrious Lord will be pleased to consider with kindly countenance and untroubled vision that Count Guido did the killing that his honour, which had been buried in infamy, might rise again. He killed his wife, who had been his shame, and her parents, who had set aside all truthfulness and had repudiated their daughter. Nor had they blushed to declare that she was born of a harlot, in order that he might be disgraced. They also perverted her mind, and not merely solicited, but even by the strength of her filial obligation compelled her to illicit amours. He killed her lest he might live longer in disgrace, loathed by his relatives, pointed out by the noble, abandoned by his friends, and laughed at by all. He killed her, indeed, in that City which in olden days had seen a noble matron wash away the stains of shame with her own blood—stains which against her will the son of a king had imposed upon her. And thus she expiated the violent fault of another by her own death. (See Valerius Maximus and Titus Livius.) This city also saw a father go entirely unpunished, and even receive praise, who had stained his hands with the murder of his daughter, lest she might be dragged away to shame. [Citations.] So much did the fear of losing his honour weigh upon his heart, that he preferred to be deprived of his daughter rather than that she should continue to live in dishonour, even against her own wish. Count Guido did the killing in their own home, that the adulteress and her parents, who were aware of her crime, might find out that no place nor refuge whatsoever was safe from and impenetrable by one whose honour had been wounded. He killed them lest deeds of shame might be continued there, and that the home which had been witness of these disgraces might also be witness of their punishment. He killed them because in no other way could his reputation, which had been so enormously wounded, find healing. He killed them that he might afford wives an example that the sacred laws of marriage should be religiously kept. He killed them, finally, that either he might live honourably among men, or at least might fall the pitied victim of his own offended honour.

GIACINTO ARCANGELI, *Procurator of the Poor.*

[File-title of Pamphlet 9.]

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*By the Most Illustrious and Most Reverend Lord Governor of the City in Criminal Cases:*

# *ROMAN MURDER-CASE.*

*For Count Guido Franceschini and his Associates, Prisoners, against the Fisc.*

*New Memorial of law, by the Advocate of the Poor.*

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*At Rome, in the type of the Reverend Apostolic Chamber,*
1698.

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# ROMANA HOMICIDIORUM

[Pamphlet 9.]

Most Illustrious and Most Reverend Lord:

The confessions of Count Guido Franceschini, and of Domenico Gambassini, Francesco Pasquini and Alessandro Baldeschi, his companions, are null; and therefore they should be given no consideration, as they issued under fear of the rigorous torment of the vigil, unjustly decreed against them. [Citations.] And this is true even though they still persevere in the same confessions. [Citations.] For as we have said in our past argument (which may be reassumed here by favour), the Constitution of Paul V., of sacred memory, issued for the reformation of the tribunals of the City [Citation], commands that this torture be not inflicted except under two concurrent circumstances. One of these is that the accused be under the strongest of proofs, and the other that the crime be very atrocious. And the authorities alleged in my argument, § *Quatenus*, etc., testify that it has been so practised.

Nor indeed can the asserted [discretionary] powers of this tribunal give support; because, whatever they may be, they have no place unless the crimes are punishable by death. Raynaldus [Citation] gives this reason: Whenever the defendant should not be condemned to death, he also should not, for the purpose of getting confession from him, be exposed to torture which might cause death, as it almost caused the death of Alessandro, who fainted dead away under two turns at the same torture.

But the crime, which has been imputed to Count Guido and his helpers, and which they themselves have confessed, is murder neither of the first nor of the second degree, as was fully proved in my past argument. And indeed since Count Guido was moved to kill or to have killed both Francesca Pompilia, his wife, and Pietro and Violante, his parents-in-law, because of his sense of honour; namely, on account of the adultery which Francesca Pompilia committed with their conspiracy and aid, this fact relieves from the penalty of death, not merely himself (according to the texts and authorities alleged in my said

argument) [Citations], but also his helpers (according to the authorities likewise alleged in said argument). [Citations.]

Gabriel states: "And much less ought those to be punished with death, because if we will only examine the common opinion of wise men, just anger may excuse from a graver penalty than this; for according to the Gracchian law, Code concerning Adultery, even those who are called and led to the crime should likewise be excused."

Aside from what may be claimed in this present state of the case, that the plea of injured honour is not established, the decree in condemnation of the Canon Caponsacchi for the said adultery issued in this tribunal, September 24, last past, and given in full in our Summary, No. 8, makes the matter clear and manifest. [Citations.] For it is there said: "Joseph Maria Caponsacchi, of Arezzo, for complicity in the flight and running away of Francesca Comparini, and for carnal knowledge of the same, has been banished for three years to Civita Vecchia." Nor can these words be said to be merely the title of the case, which does not make any one guilty, as my Lord Advocate of the Fisc supposes; but the very decree and the title of the case, as seen by me in the original Process, was that which follows: *Aretii in Etruria fugæ a viro.*

But, in brief, the said Canon was condemned merely to the said punishment because he was a foreigner and had committed his crime outside of this State; in such case he should be dismissed merely with exile. [Citation.]

Nor is it true that the Court receded from the said decree and still less that a modification of it was demanded. For we have no other fact than that for the purpose of giving some little indulgence to the still asserted honour of the wife and to the decorum of the said Canon, for which the Procurator of the Poor, their defender, kept sharply and incessantly urging, in the command for imprisonment, instead of the words of the said decree, these other words were applied: *Pro causa de qua in actis.* These words do not imply the correction of the preceding words, but indeed the virtual insertion of all the acts, and consequently of this same decree also. [Citations.]

And this is all the more true because the said decree could not be changed unless both sides were heard; which, as I remember, was the response given to the said Procurator when he insisted upon the said modification. [Citations.]

But why should I now insist on former matters when there is such conclusive proof of the adultery and further dishonour of

the said wife from the many strong reasons deduced in the present stage of the case, and well weighed by my honourable colleague, the Procurator of the Poor, in his customary excellent manner? (I do not here repeat them, that I may avoid useless superfluity.) Hence there is left no room for doubt as to the outraged honour, which indeed impelled Count Guido to the commission of crime. For it would be quite enough that a cause of this kind be verified, even after one has committed the crime, as Bertazzolus advises on this point. [Citations.]

Still further, there is no need now to insist on past matters because Count Guido has stated the plea of injured honour not merely against his wife, but against his parents-in-law in his confession (especially page 98): "Thereupon followed her flight, which was so disgraceful, not merely to my house, which is noble, and would have been so to any house whatsoever, even if of low estate. She made this escape by night with Canon Caponsacchi and his companions. In the progress of her flight along with the driver of the carriage, she was seen by the said driver, kissing and embracing the abovesaid Canon. Still further, I have found out that they slept together at Foligno in the posthouse and then again at Castelnuovo. By such proof, she stands convicted as an adulteress, not merely for this, but for other like excesses, which I have since heard that she committed in Arezzo with other persons." And page 672, where we read: "And when the said Santi was asked whether he would give ear to offering an affront to the Comparini, because of my honour and the plots they had made against my life, Alessandro responded that he would do it, and if some one else were necessary he would find him. Accordingly, after a few days, I received in my home Biagio, who has been twice named above, in company with the abovesaid Santi, and he said that he also would give ear to it, as being specially a question of my honour and the contrivance against my life." And at page 678: "And while we were staying in the same vineyard, that is in the house within it, we spoke of various matters and particularly of what was to be done, namely of the affronts to be offered to the Comparini (that is to Pietro, Violante, and Francesca, my wife) and of wounding them because they had taken away my honour, which is the chief thing, and had also plotted against my life." And at page 683, near the bottom, we read: "And I would have so much to say that one might write from now till to-morrow morning, if I wished to tell all the trouble and expense I have suffered from the said Comparini. But all this would amount

to nothing, if they had not touched my honour and plotted against my life." And page 684: "The Santi above-named was a labourer of mine at my villa of Vittiano, and consequently was informed of all these troubles I had suffered at the hands of the said Comparini. He also knew of the very indecent flight made by my wife in the manner elsewhere told. The abovesaid Alessandro then began of his own accord to seek me out and did find me, so that he might give ear, in the event that I should wish to avenge my honour and the plots which they had made against my life." And page 699: "And she together with Canon Caponsacchi was overtaken by myself at Castelnuovo, where they were arrested by the officers and conducted to these prisons. In the Court, many a time I laid stress on the crime of her supposed conception in order that they might be punished. I never having seen what would be considered expedient in an affair of such importance to my honour, have been obliged to take some resolution for recovering it, because the Comparini, with greatest infamy, had transferred to me their own ignominy." And page 722: "And what I said to Alessandro, Biagio, and Domenico, I also said to Francesco once when he, knowing the offences against my honour which I had suffered, asked me if I were ready to give a beating to my said wife. And I then replied to him that she deserved not merely a beating, but death."

Such a confession should be accepted with its own qualifications, for the Fisc cannot divide and detach this from it (according to the usual theory). [Citations.]

This is undoubtedly true, when, as in the present case, one is arguing for the infliction of the ordinary penalty, whatever may be said, according to some authorities, for the infliction of an extraordinary penalty. [Citations.] Ludovicus extends this conclusion to all qualified confessions in any kind of crime.

This is true especially when the qualification is not merely propped up in some way, but is conclusively proved. [Citations.] For beside the said decree, and the other considerations above, we have his fellows in crime especially swearing that their services were required by Count Guido for committing crime in his very company for the abovesaid reason. Especially is this the case with Blasio Agostinelli, page 316: "Signor Guido told me that his wife had fled from him in company of an Abate, and had carried away some money and jewellery. He led me into the very room where she had robbed him of the said jewellery and money, and told me that he wished to go to Rome to kill his

wife, and that he wished that I and the said Alessandro would go with him," etc. And page 317: "At the above time the said Guido told me that his wife, for the purpose of fleeing securely with the said Abate, and that he might not perceive it, had mixed an opiate in the wine for dinner to put himself and all the rest of them to sleep. He also said that he was in litigation with his father-in-law, who had not merely sworn that the said wife was not his own daughter, but still further had received her back into his home, after she had run away from her husband, although he would have put her in a monastery after he overtook her at Castelnuovo during the flight." And Alessandro Baldeschi (page 623): "The said Guido in the presence of myself, as well as that of Biagio, Francesco, and Domenico, told me that he ought to kill the lady, that is, his wife, who was here in Rome, to recover his own honour; and also to kill the father and mother of the said wife because they had lent her a hand in the insult she had offered to his honour." And page 645: "He told us also, in the presence of the keeper of the vineyard, that he was obliged to kill his wife, his father-in-law, and his mother-in-law, because the latter had lent a hand to their daughter in her ill-doing, and had acted the ruffians too, and because the said Guido also declared that these same people, whom he had to kill, had wished to have himself, that is Guido, killed."

Nor can the plea of injured honour be excluded by the attestations of those who afforded assistance to Francesca Pompilia even up to the time of her death: for they attest that she made declaration that she had never violated her conjugal faith. These assertions are merely testimony given outside of a trial, and do not demand belief. [Citations.]

And more especially as they were extorted and begged (while the suit was pending and the other side was not summoned), by the heir of the same Francesca Pompilia, for avoiding the prosecution by the Monastery of the Convertites, which was laying claim to the succession to her property on account of her dishonesty. Such shame would cause all of her hereditary property to be sequestered and judicially assigned to the said Monastery by law. [Citations.]

And this objection to their testimony is especially true because some of the witnesses who swear as above are beneficiaries of the same Francesca Pompilia, so that they might be swearing for their own advantage. For if her dishonour were substantiated, her property would devolve upon the said Monastery, and consequently they would be shut out of their legacies. [Citations.]

And however far these attestations may occasion belief, a declaration of this kind serves to no purpose, because no one is presumed to be willing to reveal his own baseness. [Citations.] So likewise Francesca Pompilia should not be believed, especially when testifying outside of a court and without oath. [Citations.] Much less are the aforesaid witnesses to be believed, lest more credence be given to hearsay evidence than to its original. [Citations.]

Nor can it be said that no one is presumed to be unmindful of his eternal safety; for all are not presumed to be Saint John the Baptist. [Citation.] Especially when the argument is concerning the prejudice of the third. [Citation.] And still more so when the argument is for punishing more gravely the enemy of the declarant. [Citations.]

And therefore, as the plea of injured honour is substantiated, it makes no further difference that the said murders were committed after an interval, according to what we have very fully affirmed in our last argument, § *nec verum est*, even down to § *prædictis nullatenus*. There it was shown that this is the general opinion of authorities, and in accordance therewith judgment has been given from time to time not only in the Sacred Courts, but also in all the other tribunals of the world, as Matthæus well observes, etc. [Citation.]

Nor can there be any departure from this opinion in the present case on the ground that Count Guido did not kill his wife in the act of seizing her in her flight with her lover, but was indeed content to carry her before the judge as an adulteress. For it would not have been safe for him to kill her then; because he was alone and she was in company of the said lover, a daring young fellow, strong, and well armed, and accustomed to sinning. And what is more, this lover was prompt and well prepared to make resistance, lest his beloved Amarillis should be snatched from him. Likewise she was prompt and ready to hinder her husband even with a sword she had seized and drawn, lest her beloved Mirtillo might be offended. Guido should not therefore be considered to have spared her nor to have remitted his injury. But lest she might escape into more distant parts where he could have no hope of the due vengeance, his just and sudden anger then counselled him to have her arrested by officers, so that he might kill her as soon as possible; and when afterward a suitable occasion arose, if he killed her, it should be considered as if he had slain her immediately. [Citations.]

And, generally, whatever is done after an interval may be said

to be done incontinently, if done as soon as a chance for doing it was given. [Citations.]

But so far is the Law from believing that this kind of injury is remitted by a husband that it rather believes that the spirit of vengeance always continues in him. Therefore it comes about that a wife may be held responsible for looking out for herself; so much so, indeed, that her death which follows thereupon may never be said to be treacherous. [Citations.] Muta speaks of the case of a husband who had his wife summoned outside of the city walls by his son, in order that he might kill her safely, and yet the husband was condemned only to the oars for seven years.

This also makes some difference in the case, that certain authorities hold that a husband may indeed hide his wife's baseness for the purpose of taking vengeance upon her safely later on. [Citations.] Likewise he may have his wife hide his disgrace for the purpose of taking vengeance securely upon the one who wishes to offend her modesty, according to the very famous council of *Castro* 277, *lib.* 2.

And this is all the more to the point because Count Guido was censured by the Procurator of the Poor himself, the defender of Francesca and Canon Caponsacchi, for this appeal to the judge. [Citations.] We have alleged many of these authorities in our past argument, § *et hæc nostra:* for they unanimously assert that husbands are considered vile and horned, if they do not take vengeance with their own hands, but wait for that to be done by the judges, who themselves ridicule and laugh at them. Therefore it is no wonder if the luckless husband, after he had made the said recourse to the judge, as the foolish heat of his wrath suggested to him, wished to avenge himself for his lost honour. For he sinned that he might shun the censure of the vulgar and learned alike, and that he might not add this infamy also to his lost honour.

Nor is it at all to the point that the said Count Guido, in his confession in one place, beside speaking of his injured honour, also mentions the plots aimed at his life; because the force of honour was far the stronger in his mind, as he himself asserts (page 678): "In consideration of the fact that they had taken away my honour, which is the principal thing." Nor ought any consideration be given the other cause; because, as it is so much weaker, it should be made to give way to the aforesaid reason, as was proved in our former argument, § *Et in omnem Casum,* where for another purpose we have adduced Matthæus. [Citation], who is speaking in these very terms.

And so far as we desire to give attention to this other cause, it likewise is sufficient for escaping the ordinary penalty. [Citations.]

The Fisc acknowledges the relevance of the abovesaid matters; he therefore has recourse to the circumstances attending the crime, namely, the assembling of armed men, the lawsuit going on between Count Guido and the Comparini, the prohibited arms, and finally the place where the crime was committed. For Francesca Pompilia was detained in the home where she was killed, as a prison. But a response is easy because such circumstances can indeed somewhat increase the penalty of the principal in the crime, but not so much as to raise it to the highest degree, in such a way that Count Guido and his associates should come to be punished with death. For we find it decided in these circumstances as quoted by Muta [Citation]: "A decision was therefore made in view of the case in general, March, 1617, before his Excellency, wherefrom the ill manner of killing her was evident; for he had her summoned by her son, and afterward her body was discovered, which the dogs had eaten outside of the walls. Leonardus was therefore condemned to the royal galleys for seven years." And Sanfelici [Citation] says: "And although some of them were condemned to banishment, it was because of their mutilation of the privates, a crime for which the Fisc claimed they ought to be punished by the penalty of the *Lex Cornelia de Sicariis*."

And Matthæus [Citation] says:

"When the matter had been more carefully considered in the Council, it was decided that the husband had proceeded too treacherously in pretending absence, in taking his brother with him, and in killing with prohibited arms; because merely by the use of firearms a crime is rendered insidious with us, etc. And it was accordingly decided that, because of this excess, he should be condemned to the penalty of exile for four years and to the payment of 2000 ducats." And this at the stage of appeal was confirmed [Citation] where we read: "And thus it was decided in the face of the facts proposed in condemning Francesco Palomi to the penalty of the galleys for ten years, etc., from the aggravating qualification of firearms. To the same penalty, Antonio Alvarez was condemned, who had deliberately killed his wife because she was playing him false, etc. The penalty was increased because he was judged to have omitted this earlier, since he did not complain of mere adultery, but of her living as a

strumpet. And she could not do this without the indifference and connivance of the husband."

And our reasoning is manifest, because it cannot be denied that Count Guido and his associates committed all the aforesaid crimes on the same ground of injured honour. Because just as this excuse should be considered sufficient for escaping the ordinary penalty for murder, so likewise it should be considered sufficient for avoiding the other punishments whatsoever, appointed in the Apostolic Constitutions against those committing other crimes expressed in the same; as the principal purpose of the delinquent is always to be attended. [Citation.]

So it was declared on this point for the purpose of avoiding the penalty inflicted in the 75th Constitution of Sixtus V. [Citation], against those who assembled armed men, whenever these men were evidently assembled for the purpose of committing some other crime, such as breaking prison and freeing those detained therein. And three very celebrated judges of the Sacred Court, namely Coccini, Blanchetti, and Orani so decided. Their decision is included among others gathered by Farinacci [Citation], and he testifies that it was so decided in the full chamber, in which the case was proposed and examined at the order of Clement VIII. of sacred memory.

Nor does what he wrote later on to the contrary in aid of the Fisc, of which he was then Advocate, stand in refutation; Spada. [Citation.] For this opinion of his was refuted clearly and rejected on the most substantial of reasons and arguments. [Citations.]

And in such conditions, for the purpose of avoiding the penalty of the Banns or Apostolic Constitutions prohibiting the carrying of arms, I have alleged many authorities in my past argument, § *neque plures* [neque vero], and above the rest, Policardus, etc. [Citation], who fully examines the matter. My honourable Procurator of the Poor gathers together others in his present argument, § *remanet tandem*. To these I add, Caballus [Citations], where it says that preparatory acts are to be included with what was prepared, and he testifies that it was so decided by the Sacred Council of Naples.

Likewise, for the purpose of avoiding the penalty set for those killing one detained in prison, and so remaining in the custody of the Prince, I have cited many authorities in my past argument, § *similiter nec aggravari*. To these I now add. [Citations.]

Nor does it make any difference that Policardus, in the place cited, and some of the other authorities recently alleged speak of homicide committed in a quarrel or for self-defence. For the attendant circumstance of a quarrel relieves one committing crime from the ordinary penalty of the crime only in so far as it overlooks the crime in one who, when provoked, wished to be avenged (as Ulpian says), and insomuch as one swept away by a just indignation is not in the fullness of his intellect. [Citation.]

But both of these reasons without doubt stand in favour of the husband or of any one else committing murder for honour's sake [Citation], even if they do so after an interval. [Citations.]

And in these very conditions, one killing an adulterous wife after an interval is excused because of just anger, which causes him not to be in the fullness of his intellect, etc. [Citations.]

Ulpian [Citation] also says: "He ought to be angered with a wife who has violated his marriage with her, and his wrath should spring from indignation for contumely when received, and his nature should arise so that he would drive her from himself in whatever manner he could." "For it is more difficult to restrain one's anger than to perform miracles," as St. Gregory says. [Citation.]

The other authorities, indeed, who speak of persons committing murder in self-defence with prohibited arms or in prisons should likewise be in our favour. For the defence of honour in the case of men of good birth, especially of nobles, is to be likened to the defence of life itself. [Citations.] And indeed it surpasses life, according to the words of the Apostle in his first letter to the Corinthians, chapter 9: "Better were it for me to die than that any one should deprive me of my glory." And St. Ambrose: "For who does not consider an injury to the body, or the loss of patrimony, less than injury to the spirit or the loss of reputation?" And the third Philippic of Cicero: "We are born to honour and liberty; either let us keep them, or die with honour." [Citations.]

So that he who spurns his own honour, and does not see to regaining it by vengeance, differs naught from the beasts. [Citations.] Indeed he should be considered even more irrational than the very beasts, according to the golden words of Theodoric.

as quoted by Cassiodorus, which we have cited in our past argument, § *Nec verum est.* [Citations.]

Then as to the lawsuit going on between Count Guido and the Comparini as regards the fraud about the birth, beside what was said recently, I pray that it again be noticed that the Constitution of Alexander does not enter where some provocation has arisen from the one injured, as Farinacci well affirms [Citation] in following a decision of the Rota, which he places at the end of his counsel. And we have weighed this heretofore in our past argument, § *absque eo quod.* Such provocation in the present case resulted from the injury which the said Comparini inflicted upon this same Count Guido while the lawsuit was pending, because of their complicity in the said flight and adultery committed by their daughter on that occasion.

The other lawsuit which Francesca Pompilia made pretence of bringing against Count Guido, for divorce, might be omitted. For beside the considerations offered by my honoured Procurator of the Poor in his present argument, § *quæ etiam aptantur,* this suit was brought illegally, because the warning of it, as I suppose, had reached only Abate Paolo, the brother of Count Guido, who had no authority in this matter. And this is true especially because it is not proved that the same Guido had any knowledge of that suit brought, as is now pretended.

As to Blasio Agostinelli enough has been written in the former argument, since he has not been examined anew, and in his former examination he confessed only that he was present at the said murders, but that he had no hand in them. So the more rigorous opinion of Caballus cannot apply to him, who said that such helpers are not immune from the penalty of murder whenever they kill any one with their own hands. For the opinion of this author was proved by us to be erroneous, in our past argument, § *quidquid in contrarium.*

I might wish to add something to what has been said in the past argument as to the alienage and minority of Domenico and Francesco; but it is not yet very clear under what law the Fisc pretends that they miss these. Therefore I will rest satisfied with this response, believing certainly that it will not chance that my Lord Advocate of the Fisc may fashion his own allegations and also respond to ours without communicating them to me, as happened in the past argument very greatly to the astonishment of myself and of others. For he and I both

ought to seek the truth and to be advocates of that, as both of us are officers of the Prince according to the considerations of Rainaldi. [Citation.] Who indeed desires that anything else than justice be administered, and especially when dealing with poor imprisoned wretches? In their cause, piety should triumph, because they are the treasure of Christ. [Citation.]

DESIDERIO SPRETI, *Advocate of the Poor.*

# AN ACCOUNT OF THE FACTS AND GROUNDS OF THE FRANCESCHINI CASE

[Pamphlet 10.]

The property of Pietro Comparini did not amount to more than the sum of 10,000 or 12,000 scudi, subject to a reversionary interest, coupled likewise with the obligation to compound a good percentage of the income. He, therefore, had to live sparingly to avoid being reduced to a state of destitution, there being a bar against his use of the capital and of a part of the income. He was also too indulgent to his stomach and was given to laziness, and furthermore had taken a wife with a very small dowry. Then lawsuits came upon him, the income of his bonds was reduced, and other misfortunes befell him, so that he was brought down to a state poor and miserable enough. So much so that he was several times arrested for debt and, after making a statement of his property, received from the Papal Palace secret alms each month.

When he found himself in such straits, he decided to marry off Francesca Pompilia, his daughter, to some person who would undertake the burden of supporting him together with his wife, Violante Peruzzi, who was a very shrewd woman and of great loquacity. It was with her advice that he had undertaken the affair, and the marriage with Count Guido Franceschini was considered suitable. For when the latter had conducted his new wife and her parents back to Arezzo, his own country, he might be able to find some opportune remedy for their necessities, by the assistance in Rome of Abate Paolo Franceschini his brother, an active and diligent man; thereby putting in order the patrimony of Pietro which had been sequestered and tied up by his creditors. Therefore, when the dowry had been set at twenty-six bonds, with added hope of future succession to the rest of his property by virtue of the reversionary interest to which the wife was entitled, the bargain was accepted. This bargain was advantageous to Pietro and his wife in freeing them from the straits in which they found themselves. And it was likewise advantageous to the Franceschini, as the diligence of the Abate, and some temporary expenditure by their house well

attests. For they might well believe that they would gain in time the aforesaid property either entire, or little decreased.

Such from the beginning were the mutual purposes of that unhappy marriage. From this fact one may see how slight a pretext there is for saying that Count Guido, while making the arrangements, had tricked Pietro and his wife by giving an inventory of property with an annual income of 1700 scudi, which income was later proved to be much less, because the primary end for which the marriage was concluded might very well have been obtained by showing a much smaller income. For it is known that when this inventory was shown by Violante to Pietro Comparini, he said on seeing it: "Ho, ho, it would have been enough for me if it had been only half as much." And indeed it would have been the greatest stupidity in Pietro to have given his daughter a husband, upon the simple inventory of a foreigner and without finding out if this were true, so that the real impelling cause of the marriage had been the resources represented in the said inventory. Not even on the mere grounds of propriety and civility may Guido be reproved; because when the said inventory was produced by Pietro in the trial, the Abate Paolo Franceschini was very much surprised at it, so that he took his brother to task about it by letter, and Guido replied that he had done it at the instigation of Violante. For she desired the completion of the marriage, and, seeing Pietro irresolute, she induced Guido to give the abovesaid inventory, with some modifications, for the purpose of stimulating her husband thereto.

The marriage was finally effected, and they all went back together to the city of Arezzo. Nor were the Comparini mistreated there, as they tried to prove by the unauthoritative deposition of a servant, who had left the house in anger. One mere reading of this deposition is enough to assure one that she did this with a bad motive and at the instigation of others, as she herself has declared to various persons. This deposition shows sickeningly the distasteful prejudice with which it was conceived, and especially where she says that a little sucking lamb was made to serve as food for seven or eight persons throughout an entire week. And there are other matters alike unfit for belief. [The Comparini] were indeed treated with all consideration and decorum, as Monsignor the Bishop and the Governor of the city attest; and they are persons much better qualified to judge and much more worthy of belief than a malign and suborned servant. But you may also have the attestation

of one who was serving in that household for thirteen months, during the time when the abovesaid Pietro and Violante were there, and he is able to tell many particulars of the good treatment which they received at the hands of the Franceschini,

It is quite true that disturbances of considerable importance arose in that household; but they were occasioned by the bitter tongue of Pietro and the haughtiness of Violante, his wife. For they laughed at all the proceedings of the Franceschini, and thrusting themselves forward, with pretence of superiority, they brought upon the mother of the Franceschini, and upon the rest of the family, bitter vexations, which were hidden at the time, to avoid violating the laws of hospitality. And notwithstanding all this, when Pietro and his wife decided to return to Rome, as soon as they expressed their wish, they were provided with money for the journey, and in Rome with furniture to put in order the house they had left.

As soon as Pietro and Violante arrived in Rome, a judicial notice was dispatched at the instance of Pietro, in which he declared that Francesca Pompilia was not really his daughter, and that therefore he was not bound to discharge his promise of dowry. To prove this fact, he brought the attestation of his wife Violante. In substance, she declared that for the purpose of keeping her husband's creditors from their rights, by virtue of the reversionary interest, and also for the purpose of enjoying the income of the bonds, she had feigned that she was pregnant, and then, with the aid of a midwife, that she had brought forth a daughter. This was Francesca Pompilia, who had come of a most vile parentage.

From this blameworthy act made public so suddenly throughout the entire Court, there necessarily arose in the Franceschini an intense hatred toward the authors of it. But they were able to restrain themselves from the due resentment in the hope that if Francesca Pompilia were not indeed the daughter of Pietro and Violante, as was supposed at the time of the espousal, the marriage might be annulled and they might thus purge themselves of such a blot on their reputation. Witnesses of this feeling of theirs are found in the many authorities and experts who were requested by the Franceschini to give thought to that point and to express their opinion of it. But as these did not agree, the Franceschini were unwilling then to commit themselves to so doubtful an undertaking, in the prosecution of which they would necessarily be obliged to presuppose and confess that she was not the child of the Comparini. But by such a

confession they would be prejudiced in their interest in the dowry. And therefore they thought well then to pass the matter by that they might avoid exposing themselves to the danger both of losing the dowry and of being unable to nullify the marriage.

Nevertheless they opposed the notice, and obtained for Francesca Pompilia the continuance in quasi-possession of her daughtership and a decree for the transfer of the dowry bonds. But Pietro appealed from the decree, and the case was continued in the *Segnatura di Giustizia*. This was followed by the copious distribution of pamphlets throughout Rome, which had been printed by Pietro to the very grave injury of the honour of the Franceschini, not to say to their infamy. But the latter were able to restrain the just resentment of their irritated minds by cherishing the hope of making the court acknowledge (as did follow), no less the falsehood of their adversaries than their own truth. Supported by this hope, they subsequently bore with all patience the many insults planned against them by various cliques, and the twists and turns for hindering the transfer of the dowry bonds, the Comparini having trumped up various creditors, whether real or pretended. On account of this opposition, the Franceschini were made to feel the inconvenience and expense of that transfer. Nor have they had any benefit of the income; of which they have been able to obtain not even a two months' payment.

To such a pitch had the affairs of the two parties come, when Guido, waking up one morning, found that his wife was not in bed. As soon as he arose, he found that his jewel-box had been rifled and his wife had fled. Nor was the suspicion lacking that she had given an opiate to Guido and the entire household the preceding evening; and it was thought that this had happened at the suggestion of Pietro and Violante, as he had more than once heard threats of it. He travelled quickly along the way to Rome, and after a headlong journey he overtook his fugitive wife, in company with Canon Caponsacchi of Arezzo, at the inn of Castelnuovo. And as he was alone and unarmed, and they were armed and resolute, he saw that he was unequal to avenging that excess. He therefore thought it well to have them arrested by applying to the authorities of the said place. The court had both of the fugitives captured by the police. They were consigned to the jurisdiction of Monsignor the Governor of Rome, and were then conducted to the New Prisons.

The Fisc, indeed, makes much out of the particular that

Franceschini should have avenged his insults in the act of overtaking them; but, as an adequate response, one should think of the impossibility of his carrying out his revenge because of their precaution in the matter of arms, for Franceschini had heard along the way that the fugitives were travelling armed. In proof of this, also, when his wife saw her husband she had the hardihood to thrust at his life with bare sword. For this reason it was prudent moderation to check their flight then by arresting them. And this was all the more true because the adultery of his wife had not then been proved, and possibly he had a repugnance against imbuing his hands with the blood of her whom he had often held in his arms, as long as any hope was left alive of regaining his reputation in any other way than by her murder.

But afterward there were found the mutual love-letters of the same fugitives, barefaced and immodest and preparatory to flight. And from the cross-examination of the driver it became evident that during their journey in the carriage they had done nothing else than kiss each other impurely. And from the deposition of the host at Castelnuovo, Guido found out that both of them had slept in the same chamber. Finally, from the sentence or decree of the court in condemnation of the Canon Caponsacchi to banishment to Civita Vecchia for three years, for "having carnally known Francesca," the notoriety and publicity of this adultery followed. Let any one who has the sense of honour consider in what straits and perturbations of mind poor Guido found himself, since even the very reasonless animals detest and abominate the contamination of their conjugal tie, with all the ferocity that natural instinct can suggest. They not only avenge the immodesty of their companions by the death of the adulterer, but they also avenge the outrages and injuries done to the reputation of their masters. For Elian in his Natural History tells of an elephant which avenged adultery for its master by the death of the wife and the adulterer found together in the act of adultery. And there are other examples also, as Tiraquelli cites. [Citation.]

But returning to the series of events, it must be stated that, after the imprisonment of the fugitives, Guido also came on to Rome and was deeply affected and, as it were, delirious because of the excesses of his wife. He was comforted by his good friends with the hope that this attempt at flight, taken along with the lack of decent parentage of Francesca (under supposition of which he had contracted the marriage) would facilitate

the dissolution of that marriage, and in that way all the blots upon his reputation would be cancelled. Hence, with this hope he returned to his own country, leaving the management of the affair to the Abate, his brother. The Secretary of Sacred Assembly of the Council may be a witness of this; for Abate Paolo presented the matter to him and entreated him to propose, in that sacred assembly, this point of law as to the validity of the marriage then—that is, after a criminal sentence in the Tribunal of Monsignor the Governor, had been obtained.

In the meanwhile the same Abate attended to the plan of petitioning the conclusion of the said criminal cause. When Pompilia, to avoid conviction by the love-letters, had recourse to the falsehood that she did not know how to write, it was easy for the Abate to convict her of that lie by showing the marriage agreement signed with her own hand, as well as by a Cardinal now dead, by means of the recognition of the hand-writing. But in spite of this, when the merits of the case had been made known everywhere, the same Abate perceived that instead of his being pitied, little by little every one began to laught at him and to deride him, as he has told several persons. Perchance the attempt was being made to introduce into Rome the power of sinning against the laws of God with impunity, along with the doctrine of Molinos and philosophic sin, which has been checked by the authority of the Holy Office. So many persons would desire to blot out from the minds of men their esteem of honour and of reputation in order that they might sin with impunity against the laws of men and might give opportunity to adulterers without any check from disgrace or shame.

And it is certain that the Abate, seeing the cause unduly protracted, had just grounds for placing it at the feet of our Lord [the Pope], with a memorial in which he declared that he could no longer endure such important and such various litigation and vexation arising from that luckless marriage, and he prayed that a special sitting be appointed for all the cases—that is the ones concerning her daughtership, her flight, her adultery, the dowry, and others growing out of the marriage as well as the one concerning its annulling. But he had no other reply than: "The matter rests with the Judges." So, with devout resignation to His Holiness, he awaited the outcome of the said criminal trial, from which he hoped to regain, at least in part, the reputation of his house.

In the meantime, Pietro Comparini was supplied with plenty

of money by the generosity of some unknown person, possibly a lover of the young girl. He vaunted his triumph boldly in the throngs and the shops, places of his accustomed resort, and he praised the resolution and spirit of his daughter for having known how to trick the Franceschini with a disgraceful flight and with the thievery of such precious things, and for having found an expedient to give to the judge in the trial such good replies with all details thereof. He also boasted that in a little while she would return to his home despite the Franceschini. For he would bring so many lawsuits and scandals upon them that they would be forced to be silent and to let matters run on. For these statements we can have the attestations of many persons, in case they are needed. Therefore, because of such stinging boasts and such irritations, the mind of Guido was ever more embittered in spite of all the power he could master for restraining the impetus of his anger which had been provoked by such injuries.

Francesca Pompilia had been previously transferred from the prisons into the Refuge called *della Scalette*, where she stayed for some months. Then it was discovered that she was pregnant, and many attempts were made to secure an abortion. For this purpose, powders and other drugs were given several times by the mother. As this proved useless, she was remanded to the home of Pietro and Violante on the pretext of an obstruction and the necessity of relieving herself. There, at the approach of the physicians, her pregnancy was discovered. The truth is, that when her womb began to grow, the nuns did not wish for her confinement to take place within their walls, and therefore a pretext was found for removing her on the grounds of the said obstruction and the necessity of removing it.

Now at this point the Abate found it necessary to break the bonds of his forbearance: for although it was indirectly that he was offended, that is, in the person and honour of his brother, nevertheless it seemed to him that every man's face had become a looking-glass, in which was mirrored the image of the ridicule of his house. Therefore, being humiliated, though he was strong and constant in other matters, he often burst into bitterest tears, until he felt very much inclined to throw himself into the river, as he indeed declared to all his friends. And to free himself from such imminent danger, he decided to abandon Rome, the Court, his hopes and possessions, his affectionate and powerful patrons, and whatever property he had accumulated during thirty years in the same City. Any one may imagine with

what pain he parted from these and went to a strange and unknown clime, where he would not meet the fierceness of his scorners, who had been merited neither by himself nor his household.

But the injury of Guido, arising from a sharper and severer wound, within his very vitals as a husband, had the power to arouse his anger even to the extreme. Nor did he consider it sufficient redress to punish himself with voluntary exile for the crimes of others; for such a resolution might be considered by the world as a plain proof of his weakness and cowardice. He soon had sure information that, during the month of December, Pompilia had given birth to a boy in the home of the Comparini, which child had been intrusted secretly to a nurse. He also heard that the infamy of the friendship with the said Canon had been continued, inasmuch as he was received as a guest into the said home (as was said). For like a vulture, Caponsacchi wheeled round and round those walls, that he might put beak and talons into the desired flesh for the increase of Guido's disgrace. Guido accordingly felt the wildest commotion in his blood, which urged him to find refuge for himself even in the most desperate of determinations.

In the meantime he turned over again and again, as in delirium, his sinister thoughts, reflecting that he was abhorred by his friends, avoided by his relatives, and pointed at with the finger of scorn by every one in his own country. And the word went abroad that in Rome they were selling his reputation at an infamous market. (This matter has moved the treasurer of the Convertites, since the death of Pompilia, to begin proceedings and to take possession of her property.) Added to the above were the continual rebukes which he received because of his lost honour, so that he became utterly drunk with fury. He left Arezzo with desperate thoughts, and when he had reached Rome he went to that home which was the asylum of his disgraces. Nor could he have any doubt how much the very name of the adulterer was respected; for when Guido made pretence of delivering a letter of his sending, the doors were immediately thrown open; and so, scarcely had he set his foot upon the threshold, before he saw his dishonour proving itself before his very face; of which dishonour he had heretofore had only a distant impression in his imagination. Then bold and triumphant, he no longer feared to upbraid her with unmasked face for all the insults which had been inflicted upon his honour in that household; and as he looked all around at those walls incrusted with his heaviest

insults, and with his infamy, the dams of his reason gave way and he fell headlong into that miserable ruin of plunging himself with deadly catastrophe into the blood of the oppressors of his reputation.

There is no doubt that Franceschini has committed the crime of a desperate man, and that his mind, when it was so furious, was totally destitute of reason. As he had lost his property, his wife, and his honour, there was nothing else for him to lose unless it were his miserable life. For, as Paolo Zacchia, the learned philosopher and jurist, says in speaking of anger in man: "Such and so great is its force that it does not differ at all from insanity and fury." Galenus very clearly affirms this, adding that when in law it is known that crimes are committed in such a state, they are punished with a smaller penalty, even though it has to do with the very atrocious crime of parricide. Calder [Citation] also gives many other matters on our point in No. 27 and the following numbers. And these theoretic propositions are verified in actual practice in Guido; for he was so utterly mad and void of reason that he entered upon so great an undertaking even at an hour of the night when many people were around. And after that he took no precaution, such as any other person of sound mind would have taken in governing his actions. He set out by the high road on his journey of about seventy miles from the outskirts of the city without providing any vehicles, as if he were merely a traveller leaving Rome. These circumstances are plain evidences of an offended and delirious mind. [Citations.] St. Jerome writes in his letters:

"Where honour is absent, there is contempt; and where contempt is, there is recurring insult; and where insult, there indignation; and where indignation, there is no quiet; and where quiet is wanting, there the mind is often thrown from its balance."

Nor in this case does the legal distinction enter as to whether the one driven by anger committed the crime in the first impulse of anger, or after an interval of time. For this distinction might have a place when the anger arose from an insult in some transitory deed, and one that was not permanent. But in the case we are treating, the insult provocative of anger consisted of frequent and reiterated acts; that is, not so much in the passing of the wife from the nunnery to the home of Pietro under an empty and ridiculous pretence, but still more from her staying in the said home with the aggravating circumstance of his own infamy (as has been said above). Accordingly, as the injury is permanent because of the continual affronts which the injured

one received, so the vengeance is understood to be taken immediately and without any interval. This the defenders of the cause have sufficiently proved in their no less erudite than learned writings with their very strong arguments and their unsurpassable learning.

Nor does it amount to anything for one to say that the crime was aggravated, first, by the kind of arms used; for Virgil [A. I. 150] says: *Furor arma ministrat;* nor, secondly, by the company of four, or let us say the conventicle; nor, thirdly, by the place, the excess, or the other circumstances considered by the Fisc. For in a madman, everything is excusable, as it is axiomatic and a very sure principle that nature then arises in such a way that it drives a man from himself, in whatever manner is possible, etc. In conformity therewith, Fracosto speaks as follows: "And in truth an ingenuous mind, and one that knows the value of its own honour and reputation, is very painfully offended in a part so sensitive and so delicate; and at such a time reaches the limit of madness and of desperation; for it has lost the light of reason, and in delirium and frenzy cannot be satisfied even if it succeed in turning upside down, if that were possible, the very hinges of the Universe, for the purpose of annihilating not merely the authors but the places and the memory of its insults and shames. For "the rage and fury of a man does not spare in the day of vengeance, nor does it grant the prayers of any, nor does it accept in requital many gifts," as the Holy Spirit speaks on this point, through the mouth of Solomon, in the sixth chapter of Proverbs, at the end. With this very well agrees what St. Bernard has very learnedly written in his letter to his nephew Robert at the beginning: "Anger indeed does not deliberate very much, nor has it a sense of shame, nor does it follow reason, nor fear the loss of dignity, nor obey the law, nor acquiesce in its judgment, and ignores all method and order."

There is no doubt that Samson reached this pitch when he fell into the power of his enemies. He suffered with an intrepid mind the loss of his eyes and other grievous disasters, but when he saw that he was destined to serve as a pastime in public places, and when he there heard the jeers and derision of the people, the anger in his breast was inflamed, so that, all madness and fury, he cried out: "Let me die along with the Philistines." And giving a shake to the columns which sustained the palace he reduced it to ruin: "And he killed many more in his death than he had killed while alive," as the Holy Scripture testifies. And Christ himself, although he was very mild, and had the greatest patience while receiving opprobrium and insults without ever

complaining, yet answered, when he knew that his honour was touched, "My honour I will give to no one." And it is certain that any one who cares for honour and reputation would rather die an honoured man beneath *mannaia* than live for many ages in the face of the world with shame and dishonour.

This argument, strong as it is, has succeeded in weakening one wise and earnest adherent of the Fisc. And this is why the very learned pen of Monsignor of the Fisc has uttered the following period, which says:

"But because the Comparini claimed that the furnishing of food to Francesca while in prison was the duty of Franceschini, and the latter declared that it belonged to the Comparini, the Most Illustrious and Reverend Lord Governor, after having the consent of Abate Paolo, own brother of Guido, and his representative in the case, assigned the home of the same Comparini to Francesca as a safe and secure prison under security." But this fact can be clearly explained so that it will not form an objection.

When Francesca Pompilia was about to be taken from the prison to the nunnery, Abate Franceschini was asked to provide the food, with the statement that if he refused there would appear a third and unknown person who would assume the burden of it to their dishonour. Therefore the Abate wished once for all to put an end to any chance of receiving new insults; and to avoid every charge of preserving even the slightest sign of relation with this disgraceful sister-in-law, accepted a middle way proposed to him, namely, that Lamparelli, as Procurator of Charity, should make provision for it by the disbursement of his own funds and should pay it back again by what reasonably belonged to the Franceschini; for he reimbursed himself for it with the money which had been found upon the fugitives, and which had been stolen from the husband; at her capture, this money was placed on deposit in the office, where there remained so much of it still that, after all was over, the balance of it was consigned to the same Abate.

And as when the said Francesca was transferred from the nunnery to the home of Violante, all the preceding and succeeding circumstances made it very improbable that the Abate gave his consent, and as this consent is not found registered among those acts, it seems very clear that it was not given at all. Nor could he legally give it, for he was not the representative of his brother in that matter; for his authorisation confined him solely to the power of receiving back the money and other things which were deposited in the office. This is proved by his acts

and by the story which the Abate then gave to his friends and relatives; and it utterly destroys the assertion of the Fisc, since Abate Paolo says that he was indeed notified that the young woman was obliged to find relief in an indisposition, certified by a physician, and that she was obliged to leave the nunnery and to go back to her father's home. To this, as it seemed a mere pretence, he replied that he could easily undertake to purge the wife in the nunnery without exposing her to such evident danger of greater shame. He also said that he wondered very much that the affection of a father had so suddenly returned in Pietro Comparini for Pompilia, whom he and his wife had so often denied as their daughter. He wondered how they could both be, and not be, the parents of the said woman, according to their own desires to the injury of the house of Franceschini.

And if the solicitor, for the purpose of giving colour to the honour of the said lady, has falsely urged many justifications, it is to be noted that in substance all that he says on that point is founded on what with her own mouth she has said in her own favour and what she has proffered to free herself from the blame of her sins, both at this juncture and in the flight, as well as in the trial which may be referred to; in fact, quite the contrary is evident; and from the external tests which the Convertites intended to make, but from which they abstained when they heard the news of the birth of the son. And would that it had pleased God that she had observed the laws of holy modesty! for in that case so great a misfortune would not have resulted from her whims. We should notice, further, that the declaration made by the wife in the face of death may be doubtful in itself, in the sense that after confession and absolution one's sin is cancelled as if it had never been committed, so that in a court of justice she would no longer have any need of pardon. Therefore, from the above-cited circumstances and very strong reasons, there is no room to doubt that Franceschini deserves the indulgence which the laws give to excesses that find origin from the stings of honour. And, if we were within the circumstances under which the case ought to be adjudged according to expediency, without any hesitation, Franceschini should be punished mildly to diminish the force of immodesty and impudence. For the woman is not without adherents, who triumph throughout all Rome in a coterie of treachery, both in public and in private. This is for the oppression and derision against husbands who have regard for their reputation. And they give the title of pedantry to that circumspection which one ought to practise for the preservation of his own honour.

[File-title of Pamphlet 11.]

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*By the Most Illustrious and Most Reverend Lord Governor of the City in Criminal Cases:*

# *ROMAN MURDER-CASE*

*with qualifying circumstance.*

*For the Fisc, against Count Guido Franceschini and his Associates.*

*Summary.*

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*At Rome, in the type of the Reverend Apostolic Chamber,*
1698.

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M 503

# SUMMARY

[PAMPHLET II.]

No. 1.—*Bond given by Francesca Pompilia to keep her home as a prison.*

*October* 12, 1697.

BEFORE me, etc., Francesca Pompilia, wife of Guido Franceschini of Arezzo, was placed at liberty, etc., and promised, etc., to keep to this home of Pietro (son of the former Francesco Comparini), etc., situated in Via Paolina, as a safe and secure prison, and not to leave it, either by day or by night, nor to show herself at the doors or open windows, under any pretext whatsoever, etc., with the thought of having to return again to prison, etc. And after she has recovered her health to present herself at any time whatsoever, etc., at every command of the Most Illustrious and Most Reverend Lord Governor of the City; for the cause concerning which there was argument in the trial, etc., from proofs that may arise, whether new or not new; under the penalty of 300 scudi, laid by the Reverend Apostolic Chamber in the case, etc.

This is followed by the surety in due form.

NOTARY FOR THE POOR.

No. 2.—*Certificate of the Baptism of Francesca Pompilia.*

I, the undersigned, certify, etc., as is found in the baptismal record, page 152, the particulars given below, namely:

July 23, 1680. I, Bartolomeo Mini, curate, have baptised the infant daughter born on the 17th of this month to Pietro Comparini and Violante Peruzzi, who live in this parish. To her the following name was given: Francesca Camilla Vittoria Angela Pompilia, etc. In pledge of which, etc.

Rome this 9th day of February, 1698.

Thus it is, Pietro Ottoboni, Curate of San Lorenzo in Lucina.

No. 3.—*Letter of Francesca Pompilia, written in the prison of Castelnuovo to her parents.*

My dear Father and Mother:

I wish to inform you that I am imprisoned here in Castelnuovo for having fled from home with a gentleman with whom you are not acquainted. But he is a relative of the Guillichini, who was at Rome, and who was to have accompanied me to Rome. As Guillichini was sick, and could not come with me, the other gentleman came, and I came with him for this reason, because my life was not worth an hour's purchase. For Guido my husband wished to kill me, because he had certain suspicions, which were not true, and on account of these he wished to murder me. I sent you word of them on purpose, but you did not believe the letters sent you were in my own hand. But I declare that I finished learning how to write in Arezzo. Let me tell you that the one who carries this was moved by pity and provided me with the paper and what I needed. So as soon as you have read this letter of mine come here to Castelnuovo to give me some aid, because my husband is doing all he can against me. Therefore if you wish your daughter well, come quickly. I stop because I have no more time. May 3.

Directed to Signor Pietro Comparini, my father, Via Vittoria, Rome.

No. 4.—*Another letter of the same person, in which she calls the Canon to task for dishonourable advances.*

I give you infinite thanks for the octaves which you have sent me. All of these are the very contrary of the Rosalinda, which was as honourable as these are immodest. And I am surprised that you who are so chaste have composed and copied matters so immodest. I do not want you to do in everything as you have done in these books, the first of which was so very nice; while these octaves are quite the contrary. I cannot believe that you, who were so modest, would become so bold, etc.

No. 5.—*Portions of the will of Pietro Comparini.*

As to each and all of my properties, etc., I appoint, as my usufructuary heir, my wife Signora Violante Peruzzi, etc. And

when she dies I appoint in her stead, in the said usufruct of my entire estate, Francesca Pompilia, wife of Signor Guido Franceschini of Arezzo. And I do so because of her good character and because for a long time, yes, for many years, I looked upon her in good faith as my daughter, and thought that Signora Violante, my wife and myself were her parents. Then I found out that both she and I were tricked in that belief, thanks to the vanity of the schemes, unfortunately conceived by my said wife, to make me believe in the birth of the same daughter. And because of a scruple of conscience after the marriage of Francesca Pompilia, this fact was revealed to me by Signora Violante my wife. And this pretence of birth was found by me to be a fact because of the information of it from persons worthy of credit.

All this I grant, therefore, on the condition that the said Francesca Pompilia seek again her own city and stay here in Rome, etc., in which city I hope she will live chastely and honestly, and will lead the life of a good Christian. But if she do not come back to this city, or if when she has come back she live with shameless impurity (and may God forbid that), I wish that she be deprived of the said usufruct of my estate and that opportunity be given for a substitution in favour of the heir mentioned below, as proprietor, etc. Because thus, etc., and not otherwise, etc. And because the chance might arise that she be left a widow, or that her marriage be dissolved, since a lawsuit is going on, which was brought before Monsignor Tomati by the Olivieri as to her relation as child, and if the said Francesca wish to marry again, or become a nun, I am willing that she separate from my estate as much as 1000 scudi for the purpose of remarrying or becoming a nun, if she shall so please. And I advise her not to marry again, lest she subject herself a second time to other deceptions. Still further, I give her the power to leave by will 200 scudi more of my estate. And in the event that Signor Guido die first, whereby there would come about the restitution to the said Francesca Pompilia, etc., of the money received by Signor Guido, to the sum of about 700 scudi, etc. (which I think would be at least very difficult, if not impossible, because Signor Guido is wretchedly poor and his family is very poor), I wish that these moneys be not counted against the said Francesca Pompilia in said 1000 scudi, much less in her power of making a will, because then, etc.

No. 6.—*Authorisation for the management of his affairs made by Guido Franceschini to the person of Abate Paolo, his brother.*

*October 7*, 1694.

Guido, son of the former Tomaso di Franceschini of Arezzo, of his own will, etc., made and appointed, etc., to be his true, etc., representative, etc., special and general, etc., Abate Paolo Franceschini, his own brother, now living in Rome, etc., for the purpose of carrying on and defending, in the name of the said Constituent, all lawsuits and causes, civil or mixed, already brought or to be brought for any reason whatsoever, and against any persons whatsoever, anywhere, and especially in Rome, whether as plaintiff or defendant before any judge, either ecclesiastical or secular, whether before the Congregation or Tribunal, and before one or both, to give or receive charges, or to contest lawsuits, to take oath as regards the calumny, and to furnish whatever other testimony is lawful, etc., and to carry on and obtain each and all other necessary matters, in the same manner and form as the Constituent could, if he were present, and as seems well pleasing to the said Procurator, etc., promising, etc., and demanding, etc.

I, Joseph, etc., de Ricii, Notary Public, etc., of Arezzo was asked, etc., in pledge whereto, etc.

[File-title of Pamphlet 12.]

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*By the Most Illustrious and Most Reverend Lord Governor of the City in Criminal Cases:*

*For the Fisc, against Count Guido Franceschini and his Associates, Prisoners.*

*Response of The Procurator General of the Fisc.*

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*At Rome, in the type of the Reverend Apostolic Chamber,*
1698.

# ROMANA EXCIDII

[Pamphlet 12.]

Most Illustrious and Most Reverend Lord:

Why should we waste time in disputing the point whether adultery committed by Francesca Comparini with Canon Caponsacchi, as is claimed by the other side, is sufficiently proved? For in our first information [Pamphlet 5] as to the law and fact in the case, we have already declared that judgment was given in the *Congregation* only for the penalty of banishment to Civita Vecchia against the abovesaid Canon, and of retention in the nunnery against Francesca, because of the very lack of proof of the said adultery. And this is quite right in law, because neither the Canon himself nor the said Francesca have confessed, much less been convicted of it; and because the suppositions brought on the other side are trivial and equivocal. But, even if these latter had been weighty and very urgent, they would not have been enough to establish conclusive proof, but at the most could only lead the mind of the judge to place some minor punishment upon them arbitrarily, as Farinacci testifies. [Citation.]

Therefore there should be strict insistence on behalf of the Fisc upon the point that Guido Franceschini had not the right to kill, after an interval, his wife, whom he had not taken in adultery nor in base conduct, without incurring the ordinary penalty of the *Lex Cornelia de Sicariis*. For in our former writings, § *Alii vero*, we have proved by the strength of many distinguished authorities that a husband who kills his wife after an interval is not excused from the said penalty.

Now that this fundamental assertion [in their argument] is overthrown, we declare that the rights of the Fisc cannot at all be controverted in the case with which we are dealing, since the authorities alleged by the Defence, who excuse a husband from the ordinary penalty, speak in the case of simple murder; and they ought not, accordingly, to be extended to a case made

still graver by qualifying attendant circumstances. And for this reason, because the penalty cannot possibly be the same, when the crime is greater in the one case than in the other. [Citations.]

Nor for the purpose of overthrowing this fundamental idea of the Fisc can the objection be made that all the qualifying and attendant circumstances, which have been brought together in behalf of the Fisc, should have no consideration, because they tend toward and are preordained for the end had in mind; for the end and intention of Count Guido was directed toward the murder of his wife and the vindication of his honour. But one can well understand how fallacious this argument really is, from what I have already written in § *Prima enim* together with the one following, and § *secunda qualitas* and *si ergo*. There we have proved that the learned authorities who can be adduced by the other side speak and should be so understood when the end is licit and not prohibited by law, or else when some qualifying circumstance, through the force of particular Constitutions or Banns, does not establish some further capital crime, distinct and separate. And this is true whether the preordained end in the mind of the delinquent follow or do not follow.

But in our case, from what has been conceded by the lawyers for the Defence, the husband is not permitted by law to kill with impunity his wife, after an interval, for adultery. But he is permitted by law to slay the vile adulterer and his adulterous wife only when taken in adultery. How then can these authorities be applied to our case? For they hold good and find a place for themselves only in a case permitted by law. In these circumstances speaks Laurentius Matthæus [Citation], who is cited by the other side, where in his setting forth a case we may read: "The adulterer and adulteress were slain in the home of the husband, although in that case the husband did not escape unpunished, because he had used firearms."

Nor does it hold good in law and practice that the bearing of arms is included along with the crime committed. Not in law, as we have affirmed in our other argument § *si ergo;* nor in practice, because in all the tribunals of the entire Ecclesiastical State, it is held that even when murder in a rage has been committed, if it has been committed with the arms which are prohibited under the capital penalty, especially if these arms come into the possession of the Court, a more severe penalty is inflicted. And murders which should suffer a lighter penalty because they were done in anger are condemned under the ordinary penalty

because of the carrying of such arms. Farinacci and Guazzini testify that this has been the practice in the Ecclesiastical State while this Decree has held good. [Citations.]

Still less applicable are the other authorities, who were adduced to escape the order of the Constitution of Alexander. For although it is true that for this crime the penalty threatened by the same decree does not enter, unless these three matters are concurrently present, namely craft, the occasion of a lawsuit, and the fact that no provocation has arisen (as Farinacci holds [Citation]), yet in our case, all of the abovesaid concur. As to the craft, there can be little doubt, since by the very confession of the Defendants we have knowledge of the preceding discussion and deliberation for committing the murders. And Decian and others affirm the charge of craft may arise from such a discussion. [Citations.]

The presence of a lawsuit is likewise undoubted; because, on the representation of Pietro Comparini, suit was not only brought before Judge Tomati as to the dowry promised and the goods subject to entail, for the exclusion of the said Guido Franceschini and Francesca his wife, but also a sentence favourable to the said Franceschini has been handed down by the same judge.

But still further we may gather, from the confession of Franceschini himself, that the provocation whereby he was moved to kill his wife arose because of the pretended adultery; on this point the counsel for the defence have principally insisted. Nor can they deny that this same cause was introduced in the criminal prosecution in the presence of the judge by the same Franceschini. It is quite necessary, then, to acknowledge that this ought to justify the application of the penalty of the Alexandrian Bull; for this decree speaks in civil as well as criminal cases, as is evident in the fourth paragraph of the same Bull, where we read: " That successively in future times forever, each and all persons, ecclesiastical and secular, of whatever quality, dignity, state and grade of rank and prominence, in their own causes under benefit of clergy or secular, also in criminal and mixed cases, whether now before this Court or pending for the time, their adversaries, or those following or helping them, or the Advocates or Counsel of them." And also in the place where we read: " If mutilation of limb, or death (which God avert) follow, they incur *ipso facto* beside the loss of their right and case, the sentence for the outraged majesty of the Law."

We believe we have sufficiently canvassed these matters with galloping pen (there being but a brief three hours) to prove clearly that the foundations of the Fisc affirmed in our former writings still stand fast, in spite of what has been recently deduced by the opposition so fully and so learnedly, but without legitimate proof.

F. Gambi,
*Procurator General of the Fisc and of the Reverend Apostolic Chamber.*

[File-title of Pamphlet 13.]

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*By the Most Illustrious and Most Reverend Lord Governor of the City in Criminal Cases:*

*ROMAN MURDER-CASE*
*with qualifying circumstance.*

*For the Fisc, against Count Guido Franceschini and his Associates.*

*A reply in matters of law, by the Lord Advocate of the Fisc.*

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*At Rome, in the type of the Reverend Apostolic Chamber,*
1698.

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# ROMANA HOMICIDIORUM

[Pamphlet 13.]

Most Illustrious and Most Reverend Lord:

In the beginning of his recent information, my Lord Advocate of the Poor has criticised as unjust the decree of this Supreme Tribunal, which inflicted the torture of the vigil upon Count Guido Franceschini and his associates, for the purpose of getting confession of that most horrible crime committed by them. Hence he claims that those confessions, given under the fear of it and ratified after it was over (as is the custom), cannot do the Accused any harm. He attempts, indeed, to deny the justice of the said decree, not merely because of the absence of the quality of special atrocity (as required by the decree of Paul V. of sacred memory for the reformation of the tribunals of the City), but also from the fact that the death penalty cannot be demanded for the crime under discussion. And this he claims is so (in spite of the unusual powers for ordering the torture of the vigil granted to this Tribunal) lest there may be greater harshness in the course of the trial than in the penalty itself. [Citation.]

In the end of this said recent information, he also criticises me because, to the very great wonder of himself and others, I have failed in my duty of seeking the truth in that I have made certain allegations in the defence of the rights of the Fisc, which I have not communicated to him. I thought he had complained quite enough about that orally, so that he might have spared us his new complaint. But it was not my duty to tell them to him, just as his informations, which he made for the Defence (very learned indeed in their way), have never been made known to me by him. But I assert only this, that I have paid the price of much labour, lest I may seem to have failed in my office and in the reverence with which I attend upon my Lord.

Passing over, therefore, my own personal apology, I go on to vindicate the decree of this Tribunal from the injustice charged against it. I also omit proof of the quality of the crime as to whether it may be considered very atrocious, for I have abundantly argued this point in my past response, § *Sed quatenus*

*etiam*, with the one following. For I showed that this quality could be sustained because of the attendant circumstances which exasperated and raised the crime to the outraging of the majesty of the law, according to the provisions of the Apostolic Constitutions and the General Banns. I think it is quite enough in my present argument to show that for this offence the death penalty should be demanded. I hope to accomplish this with little difficulty, since from the very kind of severe torture decreed, by judges of such integrity, the applicability of this said penalty is pre-supposed. And so since nothing new, whether in fact or in law, can be brought, which has not been already examined in relation to the cause for decreeing the torture, now that the confession of the Accused has followed it, it is the duty of the Judges to pronounce the execution of the well-deserved penalty, which has been long expected by every one.

I have said that nothing new is brought by the defence, since their special attempt consists in repeating the plea of injured honour because of the pretended adultery committed by the wife of Guido, with the help and conspiracy of her parents, who were barbarously slaughtered along with her. This plea is offered for the purpose of exciting the pity of my Most Illustrious Lord, and the Lords Judges, in order that Guido and his associates may be punished more mildly, according to the authorities adduced on that point in their first information, § *hoc stante*, together with the one following, and § *Prædictis nullatenus*, likewise with the one following; and in the present information, § *Verum et socios*. But the same response recurs, that for the Accused this exception on the plea of pretended injury to honour can afford no refuge, because this plea has no foundation in fact and is irrelevant in law.

For what difference does it make even if the mere strong suspicion of adultery is enough to excuse vengeance taken immediately by a husband against his wife or her lover? If she were found either in lustful acts, or in those preparatory thereto; then because of such a sudden grievance excited thereby, which provokes a man to anger, the penalty should very often be tempered according to the nature of the case and the persons. But it is quite certain that to escape the ordinary penalty of the *Lex Cornelia de Sicariis* for the murder of a wife committed after an interval, the mere suspicion of adultery, however strong, is not enough; but the clearest proof of it is required, either from the confession of the wife herself or from a condemnatory sentence following. [Citations.]

But such proof is entirely lacking in our case. For the luckless wife constantly denied the adultery even till the last breath of her life, as is evident from the sworn attestations of priests and others who gladly ministered to her after she had been wounded. For they unanimously assert that she always affirmed that she had never violated her conjugal faith. Nor did she ask that such sin be forgiven her by the Divine Clemency; this assertion indeed should have much weight, since no one is presumed to die unmindful of his eternal safety. [Citations.]

Nor are the responses given by the Defence at all relevant; namely, that such proof in denial of the adultery is drawn entirely from testimony taken out of court, and extorted by the heir while a lawsuit was pending, to remove the annoyances brought by the Monastery of the Convertites, and that some of the undersigned were legatees. They also respond that since such an assertion as hers served to cover her own baseness, it should not be believed, especially as it was not sworn. And further, that although no one is presumed to be unmindful of his eternal safety, yet all are not supposed to be immune from sin, like Saint John the Baptist, which is especially true when the argument is about the prejudice of a third party and about the more severe punishment of an enemy of the one making declaration.

Now that all these claims are destroyed with so little trouble, the irregularity of the proof could stand in our way, if the Fisc were obliged to assume proof and perfect it. But the burden of proof rests upon the Accused, according to the authorities cited above for avoiding the death penalty, whenever a man kills his wife after an interval. The above attestations are brought merely to damage the proof of pretended adultery, offered by Guido. In this case, certainly, such attestations are not to be spurned, especially when we consider the quality of the persons attesting, since they are priests of well-known probity, and it is incredible that they would be willing to lie. [Citations.]

The further objection that these attestations were extorted by the heir, while a lawsuit was pending, for the purpose of escaping the trouble brought upon him by the Monastery of the Convertites, is also removed by the same reply; because when one is arguing for the proof of an assertion given in the last days of life and in the very face of death, proof cannot be established, unless this hold good. And the heir is praiseworthy, because he is obliged to avenge the murder of the one slain, lest he be considered unworthy according to the text. [Citation.] " Heirs

who are proved to let the murder of the testator go unavenged are compelled to give back the entire property," etc. He procured these attestations that he might guard the good fame of the testatrix; and this was rather because of his zeal for her good repute than to prevent the annoyances unjustly brought, and the quashing of these latter could be turned back for the exclusion of the pretended proof of the dishonesty of the unfortunate wife.

Still less can it stand in our way that some of the signers are legatees, since their interest is not large enough to prevent their giving testimony. [Citations.] And this is especially true when one is arguing to prove a matter which happened within the walls of a home, and the proof of which, on that account, is considered difficult. [Citations.] And such an exception to their testimony, so far as it has any foundation, is utterly removed by the number of the witnesses subscribed to the said attestations. [Citations.]

But [last of all], as to the objection that the assertion of one dying is not to be attended, when directed toward the exoneration of one's self, because no one is compelled to reveal his own baseness. This might indeed hold good if the adultery had been proved, and if it were not evident that, though wounded, she had died with strongest manifestation of Christian penitence, which would exclude all suspicion of a lie. In this case such an objection does not hold good, but another very valid supposition takes its place, namely, that no one is believed to be willing to die unmindful of his eternal safety. [Citations.]

For Mascardus [Citation] says that a confession given in the hour of death holds good, and he adds that this approaches nearer the truth, and cites in proof of it Marsilius. [Citation.] The latter affirms that if any one assert that a person making oath in the hour of death is lying, he says what is improbable. And Mascardus concludes that this opinion is more just, and more in accord with reason and with natural law. And though he offers some limitations, none of these are applicable to our case; and the question about which he was arguing was concerning the assertion of one wounded, as to whether such assertion constituted proof against the one charged; and this differs by the whole heaven from our dispute, if we only note that the burden of proof does not rest with the Fisc. Nor does the assertion of Pompilia when dying tend principally toward vengeance, since it is quite evident from those making attestations that she shrank with horror from that; as she always professed that she most freely pardoned her husband.

These matters we have noted beforehand rather in superabundance than because we were obliged to assert the justice of the decree of this Tribunal. It will now be easy to escape the proof of pretended adultery, brought by the counsel for the Defence. For so far as this proof is drawn from the other decree of this same Tribunal, condemning Canon Caponsacchi for flight and carnal knowledge with Francesca Pompilia, the response which has already been given holds good: namely, that a title should be given no attention, but merely the proof resulting from the trial, and the penalty imposed by the sentence. And what if in that decree, along with the "title" of "complicity in the flight and escape of Francesca Pompilia," there was also added the title "for criminal knowledge of the same"? Yet since in the trial itself no proof in verification of this was found, and since the penalty of three years' banishment does not correspond therewith, the mere title should not be given attention, according to the authorities adduced in my past response, § *non relevante.*

And on account of the following reason, still less can such clear proof of the pretended adultery be established as is required to escape the ordinary penalty for taking vengeance after an interval. For at the instance of the Procurator of the Poor a correction was decreed by the Judges, with the approval of my Most Illustrious Lord, which substituted a general title relative to that suit, namely *Pro causa de qua in actis;* and although this correction is not to be read in the record (commonly called the *Vachetta*) in which decisions are usually noted, yet it was made in the order for the dispatching of Caponsacchi to his exile and in the decree assigning to Pompilia the home as a prison. (Summary, No. 1.) And since the latter was made with the consent of Abate Paolo Franceschini, we may assert that the said change of title became known to him because of his notorious solicitude in conducting the case; and so it would be very improbable that he had not carefully examined such a decree and the obligation made by Pietro to furnish her food, without hope of repayment, and the bond given for her to keep the home as a prison. For these reasons his knowledge of that change should be considered as sufficiently proved. [Citations.]

And therefore the response falls to the ground that the decree could not be changed unless both sides were given a hearing. For while Francesca Pompilia, whose defence had not yet been finished, was unheard, much less could the title of criminal knowledge be included in the condemnation of the Canon. For

this would be injurious to her, not merely as regards her reputation, but also for the loss of her dowry, for which her husband was especially greedy. For in this way would an undefended woman suffer condemnation, and what is worse, as the event shows, would be exposed to the fury of her husband. And hence with justice was this correction requested and made. And even if this had not happened, a sentence given against the Canon could not injure her, as it was a matter done with regard to other parties. [Citations.]

But it is quite gratuitous to assert that a change as regards the matter of the trial does also impart the same change as to the expression of the title of carnal knowledge. For since several titles were originally expressed in the decree of condemnation (such as complicity in flight, running away, and carnal knowledge upon which the suit was based) the statement of the cause contained therein is no more probable as regards one than as regards another, and certainly it is not probable as regards them all. For if they had wished to include all those in the modified decree they would have said: *Pro causis de quibus in Processu*, for the singular number does not agree with several causes. [Citations.] But in the prosecution the charge of " criminal knowledge " was not proved and the Canon could not be condemned for that while Francesca Pompilia was unheard and undefended. This is on account of the indivisibility of the crime of adultery, which does not permit the division of the case for the purpose of condemning the one, while the case is pending as regards the other. And this is especially true when all parties are present and are held in prison. [Citations.] The expression, therefore, *Causæ de qua in Processu*, should be understood to apply only to the complicity in flight and running away (for this could be issued without the condemnation of Francesca Pompilia), and not to apply to " carnal knowledge." For the statement made should be considered applicable only to those matters with which the judgment relative thereto agrees. [Citations.]

And this claim of ours is rendered manifest by the mildness of the penalty to which the Canon was condemned, namely, that of three years' banishment. This certainly does not correspond with the offences of running away with a married woman from her husband's home, bringing her to the City, and carnal knowledge of her. For inasmuch as the attendant circumstance of rape, spoken about, is punishable by the capital penalty, unless a priest is being dealt with, a far severer penalty

would have to be inflicted for the adultery alone, if proof thereof had resulted from the trial. [Citations.]

My Lord Advocate of the Poor acknowledges that the penalty was too light to expiate harshly such a crime, and especially in accordance with the Constitution of Sixtus, revived by Innocent XI. of sacred memory. And therefore to avoid acknowledging the lack of proof, which might very well be inferred from the lightness of the penalty, he attempts to respond that the said Canon was dealt with more mildly because he was a foreigner and because the crime under consideration had been committed outside of the Ecclesiastical State. In this case one should be dismissed merely with exile. But this response is proved to be without foundation for many reasons.

First, because on account of the well-known privilege of the City of Rome, which is the country of all men, even those may be punished here who have committed crime outside of the Ecclesiastical State, which is subject to the secular authority of the Pope. And this is true, not merely for the handling of criminals, which is permitted to any Prince, but for the trial of the crimes. [Citations.] Cyrill testifies that he himself had so held in 1540, in the Capitolian Court, and Farinacci testifies that it was so held in this same Court in the year 1580, in the case of Gregorio Corso, who had been condemned to the galleys, because he had committed murder in Florence and had come here to Rome, after seizing the horse of the one he had slain. And this was notwithstanding the fact that the cause was very sharply defended for the accused. [Citations.]

Second, because this authority holds good whenever there is argument for punishing crimes committed by churchmen, who are subject to the jurisdiction of the Supreme Pontiff, and in the City can be punished for their crimes with the ordinary penalty, even though the crimes were committed outside of the temporal authority of the Pope. [Citations.] "Rome is a common country and, therefore, in the Roman courts any cleric or layman may be brought to trial, even though he did not commit his crime there." [Citation.]

Third, because inasmuch as it was claimed that the approach to the City and the carrying away of the wife to the same were done because of lust, and to secure greater liberty for knowing her carnally, by taking her from the home of her husband, so the Canon, on account of this purpose, would have subjected himself to penalties such as could really expiate the crime, and which also might be inflicted here in the City; for one is punish-

able with the same penalty who continues in a crime here, although he put it into effect outside of the State. [Citations.] Caballus [Citation] holds that, for deciding the jurisdiction of a judge over crimes that have been committed, the person offending, rather than the offence, should be considered. [Citation.]

Fourth, because the pretended carnal knowledge, so far as it can be said to be proved in the prosecution (and it can be verified that the decree was changed with relation to that), happened in the Ecclesiastical State; for the strongest proof of that crime was drawn from the asserted sleeping together in the same bedroom at the inn of Castelnuovo. [Citation.] And therefore the Canon could and should have been punished with condign punishment, not merely for his undertaking, but for the adultery, if that had been proved. And since this was not imposed, it may well be asserted that the Canon was not at all condemned for "criminal knowledge," unless one wishes to criticise as unjust that decree, which imposed a mild penalty and one suitable merely to simple running away and complicity in flight, and which was much tempered because of the excuse brought by the Procurator of the Poor. Therefore it may be asserted that the Canon was not condemned for the pretended criminal knowledge, since the nature of the penalty well proves the nature of the crime, with which it should be commensurate, according to Deuteronomy 25: "According to the measure of one's sin shall be the manner of his stripes." [Citations.]

And therefore, since the pretended condemnation of Canon Caponsacchi for criminal knowledge of Francesca Pompilia is excluded, the pretended notoriousness of the adultery resulting therefrom also falls to the ground. Neither can this notoriousness be alleged against her undefended. And just as public vengeance, which is to be decreed by a judge, cannot be based lawfully upon it, so much less should private vengeance be considered excusable, when taken by the husband in murdering her after an interval. He is immune from the ordinary penalty for murder even according to the more merciful opinion only when the adultery is established by the very clearest proofs displayed in confession by the accused, or by a sentence given thereupon.

Likewise it would be superfluous to avoid the presumptions adduced by the Defence, especially by the Procurator of the Poor, to destroy the proof of adultery drawn therefrom; for this single response would be enough, namely, that these proofs were all gathered together in the prosecution for Pompilia's

flight, made at the instance of Count Guido, he pressing hard to gain the dowry because of her adultery. And this was insisted on by the counsel for the Fisc, who wrote acutely upon these matters at that time. And yet, in the report of the cause these presumptions were not considered by the judges because of their irrelevance. This is evident from the lightness of the penalty decreed against the Canon. And so the examination of these cannot be renewed after the Fisc has yielded and quietly acquiesced in the sentence, from which it could appeal if it considered itself wronged. Nor could Guido legitimately have recourse to such awful vengeance by his own hand. But lest some feature of the case may be left untouched, and that the justice of the decree may be more clearly asserted, I have taken the pains to confute these briefly.

And since, in the first place, the cause of flight is considered by the Defence in order that they may prove that the said flight was entirely illicit and was planned for easier criminal knowledge, the proofs brought for this purpose should be examined. The chief of these was drawn from the asserted letter of Francesca Pompilia, written to Abate Franceschini. This makes pretence that her parents urged her to poison her husband, her brother, and her mother-in-law, to burn the home, and to return to the City with her lover. But one cannot have a better refutation of this than the very tenor of that letter, including matters that are so improbable, yes and indeed incredible, that it was rightly rejected by the judges. For who can be found so destitute and ignorant of filial love and duty as to make himself believe that a mere child, not more than fourteen years old [Citation], married away from her father's home, grieving bitterly for the departure of her parents, and wretchedly kept in the home of her husband, so that she was obliged to have recourse to ecclesiastic and laic authorities, could have written to her husband's brother (who was so unfeeling toward them), with a calm mind, of such base counsels and commands given by them, unless, as she ingenuously confesses, she was compelled by her husband to write it? Nor could she, without great peril, refuse her husband, who was demanding this. Such an improbability alone is enough to thrill with horror those reading it, and well shows that she had written this not of her own accord, but under compulsion. [Citations.]

And, therefore, there is no need to examine whether the qualification added to her confession is probable, namely, that her husband had first marked the letters of the said epistle,

which she had afterward inked by tracing them with a pen; because she did not know how to write. For possibly she shuddered to confess that she had written such matters, even under compulsion of fear, to the injury of her father and mother. Such fear is quite presumable in a wretched wife of tender age, destitute of all help, away from her father's hearth and in her husband's home. [Citations.] Mogolon says that from the absence of relatives, the presumption of such fear may arise. [Citation.] And this is especially true after she had had recourse in vain to the authorities. Nor is a sufficient proof to the contrary deducible from Francesca's signature to the matrimonial contract, and from the letters that were said to have been written and sent by her in succession to the Canon, or else thrown from the window. [Citation.] For the very brief signature made in the marriage agreement does not show such skill in writing that with the same ease she could have written so long a letter, inasmuch as daily experience teaches that many are found who can scarcely write their own names.

Still less can the ability to write be said to be proved by the asserted love-letters; for these were constantly denied by Pompilia. Nor can these letters be said to be sufficiently verified by the assertion of the said witness for the Fisc, namely, that she threw from the window a note, which the Canon picked up and then departed. For aside from the fact that the witness stands alone and is of the basest condition, namely a dishonest harlot, and so unsuited for proving a matter [Citations], she neither affirms, nor can affirm that the said letter was written by Francesca Pompilia. Likewise the letters found in the prison of Castelnuovo might have been written by some stranger's hand. And even though they had been written by her, inasmuch as they are of a later date, they do not prove her skill in writing at some past time; for she could have acquired this skill afterward because of desperation which sharpened her wits, for the purpose of inducing the Canon to undertake the flight with her, so that she might escape the peril of imminent death. For in such matters at these, which are variable and can be changed, one cannot well argue from the present to the past. [Citations.] And that in fact she did learn to write in Arezzo after the departure of her parents is evident from her letter written in the prison of Castelnuovo, and found among her private papers after her death. This is given in the present Summary, No. 3.

The proofs of the abovesaid letter [to Abate Franceschini] drawn from the letters of the Governor of Arezzo, of the Reverend

Bishop, and of Bartolommeo Albergotti, are so far from excluding the legitimate reason for flight given by herself and the Canon, during the prosecution, that they rather favour it. For although they criticised her for having such ill-advised recourse to them, they possibly did this to free themselves from censure for having thoughtlessly turned her away. Therefore it is more probable that by them the minds of her cruel husband and of her mother-in-law, who was pitiless and implacable, as experience teaches us, were exasperated all the more. Any one may well know that Guido's mind was much more embittered after the lawsuit brought concerning the pretence of birth and the rescinding of the dowry contract, and after the publication of pamphlets about the domestic scantiness and the base treatment which they had suffered in the home of the couple in Arezzo. His anger was also stirred by his jealous suspicion of the Canon (although Pompilia's love of the latter was merely pretended for the purpose of winning him) and by his exasperation, that increases the deadly hatred, which arises from a lawsuit about a considerable amount, and much more about an entire property. [Citations.] Such should the controversy about the pretence of birth be considered. Nor can the just fear of the luckless wife as to her deadly peril be denied. And driven to desperation in avoiding this, she might well have fled; for if it is permissible because of blows beyond mere legitimate correction [Citations] how much more permissible should it be considered, when the wife was continually afraid that he would kill her either with the sword or by means of poison. And, to avoid this, it was but prudent counsel for her to leave her husband and go back to her father's hearth.

It would indeed have been better if she had won her security by having recourse to the Right Reverend Bishop, in order that he might place her in some nunnery or with some honest matron; or to the Lord Governor, who would have considered her safety and the honour of her husband's family; or if she had fled in the company of some one connected with the household. But the fear of imminent peril does not permit one to take better counsel, and especially a wretched wife of tender age, destitute of all aid and exposed to the fury of her husband and her mother-in-law. And still further, she might well fear that new recourse to them would be in vain, since she had found the former so useless. Nor could she find any better way of fleeing safely, wherein she thought lay the sole help for herself, than by using the help and company of the Canon, who had been proposed to her for this

purpose by the Canon Conti and by Signor Gregorio Guillichini, relatives of her husband. It is incredible that they would have conspired against Guido's honour without the strongest and most urgent reason and without confidence in Caponsacchi's honesty and modesty. For one of them, namely Gregorio, had offered himself as a companion for the journey and would have carried out his offer if his infirmity had permitted; as we read in the said letter of Francesca Pompilia found since her death and shown in our present Summary, No. 3, which refers to the same causes, of the infirmity of Gregorio and the imminent peril, which did not permit her to await his convalescence. And therefore she is worthy of excuse since she fled for dire necessity in company of the Canon, a man of modesty well known by her (as is likewise evident from another letter in the Summary of our opponents, No. 7, letter 12, in which she calls him the chaste Joseph, and from the other letter, in which she commends him for his sense of shame). For if she chose this remedy under dire necessity, she should be excused according to the common axiom, "necessity knows no law." [Citations.]

Nor is an illegitimate cause of flight to be inferred because of the dishonest love with which Francesca Pompilia pursued the Canon in some of these letters. For although they seem amatory, yet they were ordained to the purpose of alluring this same Canon, in order that he might flee with her; since, without him, she knew that she could neither carry that out, nor even attempt it. Hence the letters can afford no proof of subsequent adultery. For although proof may result from love-letters, according to the authorities adduced by the Defence in § *His praehibitis*, yet this is avoided, if the letters are directed to a permissible end, such as flight to escape deadly peril. For then, inasmuch as the end is permissible, the means are likewise so considered, even though these are not without suspicion; for they are not considered in themselves, but because of their end. [Citations.] Nor is the proof of adultery hitherto drawn from love-letters so very strong unless they include the implicit confession of subsequent fornication. [Citations.]

The following consideration is especially urgent in leading to the belief that the luckless girl thought the Canon would conduct himself modestly during the journey. For in one of her letters she does not fail to take him to task (who had elsewhere been commended for honesty and modesty) because he had sent her questionable verses (present Summary, No. 4): "I am surprised that you, who are so chaste, have composed and copied

matters so immodest." And further on: "I do not want you to do in everything as you have done in these books; the first of them was so very nice, but these other octaves are quite the contrary. I cannot believe that you, who were so honourable, would become so bold." From this sincere rebuke it is quite evident in what spirit these letters were written, even though they are filled with blandishments and proofs of love; for she shrank even from the dishonourable verses sent to her. Hence the letters should be understood according to the intention of the one writing them, just as one's words are. [Citations.]

And should not the supposition that the unfortunate wife had destroyed her matronly shame in the journey be therefore considered trivial and improbable? For she had quite enough to do to provide for her own safety by headlong flight. Nor is it probable that she was tempted by the Canon, since the love between them is proved merely by the said letters which were preparing for the flight. And these letters show her solicitude for his modesty and continence, since for the mere sending of them she had made such complaint. For she feared lest he might become too bold, as is evident from details of the letter cited above. Nor are examples lacking of continence observed during a longer and easier journey, which had been undertaken and completed by lovers, even though they might lawfully have indulged their love. Hence it is not improbable that the wretched girl kept herself scrupulously within bounds; for she was in deadly peril, which she hoped to avoid by precipitate flight.

The other proofs of this pretended adultery are far weaker, and were rightly ignored in the report of the case, both as regards the flight and as regards the decreeing of torment; for mutual love between her and the Canon cannot be said to be sufficiently proved by the abovesaid letters; for they were preparatory to this prearranged flight.

The entry and egress to and from the home of Francesca by night is proved by a single base witness. Nor should even such entry be considered to be for a bad end, since it was in preparation for the flight. For when we have a permissible cause given, to which a matter may be referred, it should not be attributed to one that is illegitimate and criminal. [Citation.]

To this reason also should be referred her readiness in showing herself at the window by day and night at the hiss which gave signal that her pretended lover was passing. For since her love might be a mere matter of pretence for the purpose of winning

him to give her help in the flight by affording her his company in the journey, these marks of love can be of no further import than the pretended love itself. The unfortunate wife employed it as a stratagem, indeed, that she might provide for her own safety. And so this response recurs: "If the end is lawful, the means ordered toward carrying it out cannot be condemned."

The pretended insidious manner of preparing for the flight and putting it into execution by means of an opiate administered to her husband and the servants (so far as it is proved, and it was by no means proved in the Prosecution) affords indeed a proof of her flight, but not of adultery; for it was prearranged, not for that purpose, but to escape deadly peril, to which the wife would have exposed herself, all too foolishly, unless she had made sure that her husband, who was lying in bed with her, was sound asleep, or unless she had contrived some such easy way.

The ardour shown in some of the letters is indeed a sign of love, according to the word of the poet: "Love is a thing full of solicitous fear." [Ovid, *Heroides*, I. 12.] But since love was pretended for a legitimate end (as was said) she could also make a show of ardour for feigning love, since it tended toward the same end of winning his goodwill, so that possessed of his true service she might escape. Therefore, from this pretended love and these feigned signs of love, one cannot argue that their departure together from the home of the husband and their association during a long journey gives proof of the pretended adultery; because even in true and mutual love continence has been observed, which is certainly more difficult.

Nor are the authorities adduced by the Defence, in § *Accedit quod*, applicable; because that text has regard to a woman spending the night outside of her husband's home and against his will, without just and probable cause, as is evident from the words of the same. This decision is not applicable to our case, since the wretched Pompilia left her husband's home and went to her father's hearth that she might escape the deadly peril which she feared was threatening her. And so, since she did it for just and probable reason, the condemnation of the aforesaid text is turned away. And Farinacci so explains the assertion. [Citations.] "But it is otherwise if done for reason, because the mere spending of the night together does not of itself prove vice; for a case can be given where a wife spent the night with men, and yet did not break her marriage vow." [Citation.] Since this possibility is verified in our own case also, the proof of subsequent adultery cannot be inferred from her flight and association with

him in the journey, for the purpose of providing for her own safety.

Their mutual kissing on the journey, so far as it is proved, affords no light presumption of violated shame; but the proof of it is too uncertain; for it rests upon the word of a single base witness, who swears to matters that are quite improbable, namely that, while he was driving their carriage very rapidly, he saw Francesca Pompilia and the Canon kissing one another. How full of animus this deposition really may be is evident from this fact—that during the night he saw a momentary and fleeting deed, without giving any reason for his knowledge, such as that the moon was shining or that some artificial light afforded him the opportunity to see it. [Citations.] The improbability, or rather incredibility, is increased because, while the witness was intent on driving the carriage with such great speed as to seem like flying (as another witness testifies), how could he look backward and see their mutual kissing? Such an improbability would take belief away not merely from a single witness, but from many of them. [Citation.] Furthermore, there is the possibility to be considered that the jostling together of those sitting in the carriage might have happened from the high speed; and from this fact an over-curious witness might believe that they were kissing each other, although, in fact, the nearness of their heads and faces to one another might indeed be by mere chance, and not for the purpose of shameful and lustful kisses. Because whenever an act may be presumed to be for either a good or a bad end, the presumption of the evil end is always excluded. [Citations.] And so in the said report of the prosecution for flight, this presumption was justly passed over because of lack of proof; nor would it have been rejected otherwise.

Nor can this improbable and prejudiced deposition of the said witness receive any support from the pretended letters, in which Francesca thanks him for the kisses sent, which she says would be dearer to her if they had been given by the Canon himself, and sends him back ten hundred thousand times as many. For it cannot be thence inferred that if the opportunity were given their mutual kissing would follow, since these words were offered as serviceable and alluring for the purpose of winning him over; nor do they involve an obligation. [Citations.] And therefore they do not lead one to infer that they were carried out, especially since Francesca many and many a time warned the Canon to observe due modesty. And when she found that he had transgressed its limits by sending her dishonourable verses she abjured

him not to become bold in urging his passion. This is far removed from impure desire to receive his kisses, which is formally stated in the said letter, as it is without any thought of injuring her matronly honour.

The use also of laic garb, in which the Canon was found clothed, can afford no proof, because, as he is no priest, he cannot be said to be forbidden to do so on a journey. And this was probably arranged in good faith to conceal himself and to avert scandal, which might be conceived at seeing a priest with a woman in the flower of her age and, as I have heard, of no small reputation for beauty, journeying without the company of another woman or servant. [Citation.] And so the authority of Matthæus Sanzio, etc., is not applicable, because in his case there was no concurrent cause on account of which the priest might approach with improper clothes and girded with arms; and he was found by the husband, either in the very act or in preparation thereto, and was killed on the spot. In such a case the proofs of adultery may well be admitted for the purpose of diminishing the penalty, and they were gathered by the same author to that end.

Their sleeping together on the same bed, or at least in the same bedroom, at the inn of Castelnuovo, was not given consideration in the report of the prosecution for flight, because of defect of proof. This charge was indeed denied by Francesca Pompilia, and the Canon frankly confessed merely that he had rested for a little while on another bed in the same room. Nor ought a brief stay in that room be magnified to a crime, since it should be attributed to his guardianship of the said Francesca, whom he was accompanying on the journey, and hence was under obligation to guard her lest some evil might befall her. Whenever an act may be said to be done for a good purpose all suspicion of evil ceases. In these very circumstances, Gravetta [Citation] says that the interpretation should tend toward lenience, even though the harsher interpretation seems the more probable. Nor does it suffice as a full proof of adultery (if one is arguing a criminal case) that a young man be seen alone and naked with her, and that he be found locked in the bedroom with the wife, even though he have his shoes and clothing off; because these matters may be merely preparatory. And much less can proof of adultery arise from his brief stay in the same bedroom for the purpose of protecting her.

Nor can proof of their having slept together be drawn from the deposition of the servant of the same inn who asserted that he had been ordered to prepare only a single bed. For it does not

follow from this that both of them slept in it; but this was done because only Pompilia wished to rest a little while to refresh her strength, which had been exhausted by the swiftness of the journey they had made. The Canon was keeping guard over her and preparing for the continuance of the journey; and so, when the husband arrived, he was attending to this by ordering that the carriage be made ready. Hence no proof of their having slept together can result from this deposition, and it was justly rejected by the judges, so that it needs no further refutation.

And although Francesca Pompilia, in her cross-examination, tried to conceal a longer stay at the said inn by asserting that they had arrived there at dawn, yet no proof of adultery may be drawn from the said lie, for she made that assertion to avoid the suspicion of violated modesty, which might be conceived from a longer delay and more convenient opportunity. And so, inasmuch as her confession would have done her no harm, even if she had acknowledged it with circumstances leading to belief in the preservation of her sense of honour, neither can this lie injure her. [Citations.]

Since, for these reasons, the proof of the pretended adultery is excluded and almost utterly destroyed, no attention should be paid to the fact that Count Guido, in his confession, claims the mitigating circumstance of injured honour, as regards both his wife and his parents-in-law; and that this confession cannot be divided for the purpose of inflicting the ordinary penalty. For authorities of great name are not lacking who affirm that a qualification to this end added to a confession, ought to be rejected; and above the others, is Bartolo [Citation], who proves this conclusion by many reasons, and responds to those given contrary [Citation], where it is said that a judge should not admit such qualified confession. [Citations.]

Nor is such a plea of injured honour always in one's favour in avoiding the capital penalty, but only when vengeance is taken immediately; or after an interval, according to more lenient opinion, when the adultery is proved by condemnatory sentence or by confession.

But the reins of private vengeance would be relaxed far too much to the detriment of the state if, when proof of adultery were lacking, a stand could be made for the purpose of diminishing the penalty upon some qualification added by the defendant to his confession. Because in this way a witness might make a way of escape in his own cause, which is not permitted to any one. [Citations.] And nothing more absurd can be thought

of than that the burden of proof incumbent upon him for escaping the ordinary penalty might be discharged by the mere assertion of the defendant.

Nor should we admit the opinion that, even when the adultery is proved, a husband may kill, after an interval, an adulterous wife without incurring the capital penalty, since the weightiest authorities deny that. [Citations.] Bartolo, in distinguishing between real and personal injury, affirms that when injury is personal, it should be resented immediately; but if it be real it may be resented after an interval. [Citations.] And Gomez declares: "I hold the contrary opinion, indeed, that a husband may be punished with the ordinary penalty of such a crime as murder; and for this reason he may not by any means be excused, because murder cannot be committed to compensate for a crime or for its past essence, unless one kill in the act of flagrant crime," etc. And in subsequent numbers he responds to reasons given to the contrary. [Citation.] Gaillard, after he says that murder committed for honour's sake is permissible, states that this exception should be understood to hold good if the injury be resented immediately, but that it is otherwise if done after an interval. In this case the retort is more like vengeance than the defence of honour, and the offender is held to account for the injuries. [Citation.]

Much less can it be claimed that the vengeance was taken immediately because the husband executed it as soon as possible, according to the authorities adduced by my Lord Advocate of the Poor [Citation], where he tries to show that since Guido was unarmed, or insufficiently armed (that is, he was girded only with a traveller's sword), he could not attack the wife accompanied by the Canon; for Caponsacchi, as he claims, is strong and bold, and accustomed to sin in that way, and was carrying firearms. And the wife showed herself ready to die in the defence of her lover; for it is said still further that the wife rushed upon Guido with drawn sword, and was about to kill him, if she had not been checked by the police officers. But the opportunity to kill an adulteress is not to be so taken that a violent death may be visited upon her with all security and without any risk. For every legal opinion giving excuse for diminishing the penalty shrinks from this. For such diminution of the capital penalty follows because of the violence of sudden anger, which compels the husband to neglect the risk to his own life, that he may avenge the injury done him by the adultery. And so this first opportunity, as spoken of by the authorities,

in order that murder may be said to be committed immediately, should be understood to be whenever an occasion first offers itself, in excusing the delay in taking vengeance either because of absence or for some other just reason. Such is the fact in the case about which Matthæus Sanfelix writes, *contr.* 12. For in that case, the adultery was committed in the absence of the husband, and the wife had run away, so that he could not have avenged himself earlier, as is evident from the narrative of fact, given in No. 1, and No. 28 established this conclusion: "So they are excused if they take vengeance as soon as possible, since it then seems that they killed incontinently."

But who can say in our case that the husband took the first chance, since when he found his wife in the very act of flight, at the tavern of Castelnuovo, he abstained from vengeance with his own hand, and turned to legal vengeance, to which he had always clung. And indeed he charges himself with the worst baseness when he asserts that he was unequal to the task of taking vengeance because of the fierce nature of the Canon; since, when the latter had been arrested, Guido could have rushed upon his wife. Nor ought the kind of arms they carried to have alarmed him, because, according to the description made in the prosecution, it is apparent that the Canon was wearing only a sword. And so they were provided with like arms. He would not have taken such care of his own safety if he had been driven to taking vengeance by the stings of his honour that needed reparation, even at some risk to himself. For just anger knows no moderation. And he should lay the blame on himself if, alone and insufficiently armed, he had followed up his wife, who was fleeing, as he might fear, with a strong and better-armed lover. His very manner of following her proves the more strongly that his mind had turned toward legal vengeance, for the purpose of winning the coveted dowry, rather than to vengeance with his own hand for recovering his honour. For facts well show that such was his thought. [Citations.]

Likewise the delay of the vengeance after the return of the wife to her father's home excludes the pretended qualification that the vengeance was taken "immediately," because he could not put it into execution sooner. For the return home took place on October 12 of last year, and the murder was not committed till the second of January of this year. And we should rather assert that he was waiting for her confinement, which took place on December 18, in order that he might make safe the succession to the property, for which he was eagerly

gaping; because he immediately put into effect his depraved plan by destroying his wife and her parents with an awful murder. Hence, from a comparison of these dates it will be easy to see this, and it is evident with what purpose he committed the murders, and whether this vengeance for the asserted reparation of his injured honour may be said to have been undertaken "immediately," that is, as soon as opportunity was given, according to the authorities adduced on the other side.

Then when he had chosen legal vengeance by the imprisonment of the wife and of the pretended lover, and by the prosecution of the criminal cause, it was not permissible for him to go back to vengeance with his own hand; and in taking that he cannot be said to have taken vengeance immediately. He also violated public justice and the majesty of the Prince himself. This single circumstance greatly exasperates the penalty and increases the crime. [Citations.]

[But the above is true] in spite of the fact that the conclusions adduced by the Advocate of the Poor, in § *Et tantum abest*, may be applicable, and likewise the authorities approving those conclusions, on the ground that it is not presumable that the husband has remitted the injury, but rather that his desire to avenge himself has continued; and that this excludes the charge of treachery, even though the husband use trickery in taking vengeance. Because in the present case the question is not as to the nature of the murder, from which it might be claimed to have been treacherous. The husband indeed did not conceal his injury, but rather laid it bare by turning to legal vengeance. Although this is possibly less honourable, yet since it was pleasing to him, for the purpose of gaining the dowry, he could not when frustrated in this hope, because the adultery was unproved, take up again the vengeance with his own hand. And this is true even though he pretends as an excuse for his delay that he could not accomplish it sooner. For since the delay and hindrance arose from his own act he could not take therefrom the protection of an excuse. [Citations.]

But, however he might find excuse for the barbarous slaughter of his wife while under the authority of the judge at the instance and delivery of her husband, certainly the murder of Pietro and Violante should be considered utterly inexcusable. In his confession he has tried to apply to them also his plea of injured honour, because of their pretended complicity in urging the flight of his wife and in her asserted dishonour. Yet no proof

of this qualification can be brought, nor did the slightest shadow of it result from the prosecution for flight. And this is proved to be improbable, and utterly incredible, from merely considering the fact that Abate Franceschini, brother of the accused and confessed defendant, would not have consented that she be committed to their custody if he had had even the slightest suspicion of their complicity, since he so keenly desired the reparation of their honour. This fact, which was plainly confessed in an instrument prepared in the statement of fact in the Italian language [Pamphlet 10] and very stoutly denied by the Procurator of the Poor, was admitted by his own wonderful ingenuity in denying merely that notice had reached the husband, or in claiming that the Fisc could pretend to no more than mere presumptive knowledge in Guido.

But, still further, such knowledge is quite probable and is drawn from strong proof. For it is very probable that Guido was informed by his brother of his wife's departure from the Monastery, of her establishment in the said home, of the obligation assumed by her parents to provide her with food, and especially of her detected pregnancy. [Citation.] But we are not now arguing to prove the husband's knowledge thereof, but to draw from that consent of Abate Paolo a proof which would exclude the pretended complicity of Pietro and Violante in the dishonour of the wife, which latter is by no means proved.

So far is such complicity from being proved as regards Pietro, that the very contrary is quite evident from his will, made in 1695, after litigation had been instituted about Pompilia's pretended birth. In this will, notwithstanding the litigation, in the first place he leaves as his usufructuary heir Violante his wife, and after her death Francesca Pompilia, laying upon her the obligation to dwell in the City and to live honourably. This is evident from the details of the said will given in our present Summary, No. 5. In this he also asserts that she had thus far conducted herself honourably, and he claimed to leave the annuity to her because of her good manner of life. And so it becomes still further incredible that he, while alive, was willing to conspire in her dishonour, from which he shrank even when dead. For the income was to be taken from her if she should live a dishonest life, and he urged her in case her marriage were dissolved to assume a religious dress, and he left her a fat legacy to that end.

Nor can it afford any proof of this pretended complicity that when Guido had made pretence of delivering a letter sent to

them from the Canon, the doors were immediately opened by Violante to the assassins. The attorneys for the Defence try to argue from this ready credulity that the name of the lover was not hateful to Violante, and that hence his intimacy with Francesca was not displeasing. But since the Canon was the author of her liberation from deadly peril by bringing her from her husband's home to her father's hearth at the neglect of his own risk, it should not seem wonderful that Violante should give proof of a grateful mind for the help given her daughter and should open the door. Nor can one infer therefrom consent in unchastity, from which their past acquaintance had been entirely free. Much more is this so at a time when he himself was absent and in banishment at Civita Vecchia.

Therefore the true cause, on account of which the Comparini also were murdered, could be no other than the hatred with which the husband had been aflame; [and this first of all was because of the lawsuit concerning the supposed birth, which they had brought, and which had deceived him in his hope of gaining a fat dowry and inheritance; [and second] his desire for vengeance because of the pamphlets distributed at the time of the said lawsuit, and which had exposed the meagreness of the home comforts and the wretched treatment they had received in the home of the husband. These two do not excuse Guido from the penalty for premeditated murder, and indeed increase it, even raising it to the crime of *læsa majestas*, according to the well-known order of the Constitution of Alexander, as was proved in our past information, § *Accedit ad exasperandam*.

To escape the penalty assigned thereto by the disposition of this decree, in vain does he turn to an excuse drawn from supervening provocation. [Citation.] But so far as it is claimed that this crime resulted from the counsel they gave toward her flight and their complicity in the same, the proof of such complicity is entirely drawn from the asserted letter, written by Francesca Pompilia to Abate Franceschini. But this letter has been completely rejected, and even spurned by Guido himself, since in the prosecution for flight we find no insistence was made that action should be entered against Pietro and Violante for their pretended instigation. Pietro, moreover, had long ago broken off the lawsuit brought as regards the pretended birth and the revocation of the dowry contract, and so this complicity cannot be made to seem the sole provoking cause, which would exclude *causa litis*. For such a cause should be true and not pretended and should be in accord with the crime committed. [Citations

These excuses, indeed, which are claimed to be drawn from complicity in the asserted dishonour, are still further excluded by lack of proof, both of the impurity and of their connivance therein; and so the provocation implied therefrom is shown to be entirely irrelevant, and possibly fraudulent.

The other suit for divorce, brought in the name of Francesca Pompilia, it is vainly claimed is made void because of the asserted invalidity of the summons; for this summons was executed against Abate Franceschini, who lacked the authority of a proxy. Yet his authorisation was quite full enough for a lawsuit, as is evident from its tenor as given in our present Summary, No. 6, and accordingly when a suit was brought it was ample for receiving a summons. [Citation.] We are also dealing with the conditions of the Constitution of Alexander and of the order of the Banns given against those who commit offence on account of lawsuits. Hence the reply is not relevant, which is given by the Procurator of the Poor in § *Quae etiam aptantur*, that when the dishonesty of the wife is established her impunity from the wrath of her husband, who would take vengeance, should not be permitted by the introduction of a divorce suit. Nor can such murder be said to be committed for the reparation of honour when committed in anger at a lawsuit. For he takes for granted as proved, what is in question, namely, the dishonour of the wife, the proof of which is quite lacking. And Guido might have proceeded to such an extreme if, as soon as the adultery was committed, his wife brought a suit for divorce; but it is otherwise since he tried that revenge after the way of legal vengeance had been chosen by bringing criminal charge for the pretended adultery and for the purpose of winning the dowry. For after he was frustrated in this hope (since no proofs of adultery resulted from the prosecution), and after her husband's mind had been exasperated, she ought to be permitted to provide for her own safety by begging for the remedy of divorce. And while such judgment is pending any murder inflicted upon her ought surely to be expiated by the penalties inflicted under the sanction of the Alexandrian Constitution and of the Banns. For the provision of this decree is applicable, since the murder was committed while the criminal cause, brought against her for pretended adultery by her husband, was still pending. And this decree includes both civil and criminal suits, as is evident from reading it.

Likewise the assembling of armed men, and their introduction into the City for accomplishing more safely the murder of the

entire family, increases the crime to *læsa majestas*, and also necessitates the increasing of the punishment, as was affirmed in our former information. Nor is this avoided by the replies given, or rather repeated, by the Defence, and especially by the response that since the principal offence was committed for honour's sake (and hence the ordinary penalty of the *Lex Cornelia de Sicariis* has no application for that reason), so likewise the penalty for assembling men, imposed by the Apostolic Constitutions and the general Banns, cannot be inflicted; for the latter is included with the penalty for the principal offence which alone is to be attended, since the spirit and purpose make differences in crimes. [Citations.] Because the order of the said Constitution and Banns would prove utterly vain if the penalty for assemblage should cease, whenever the assembly were made for the purpose of committing some crime that is punishable with a milder penalty. [Citation.] This Bull indeed is applicable even when men are called to arms in a permissible cause and for a good end; because by it the Supreme Pontiff wished to provide for the public security and to restrain the audacity of those laying down the law for themselves. Hence all the more shall it have place when the assembly may be made for an evil end, namely for committing crime, even though the crime may not deserve the ordinary death penalty and when the crime actually follows. [Citation.] Spada gives this reason, that the Pontiff in establishing this Constitution considered only the uproar and other ills which are accustomed to arise from the assembling of armed men to the injury of the public peace. And although his opinion was rejected by the authorities adduced by his Honour, the Advocate of the Poor in § *non refragante*, this refutation does not apply to the assembling of armed men to an evil end (even though this end is not so criminal that the death penalty may be inflicted), but to their assemblage for a permitted cause of regaining possession immediately, by meeting force with force. Even in this latter case Spada holds that there is place for the order of the Bull. Hence the refutation given above does not prevent the application of the provision of the abovesaid Constitution to our case, since the assembling was prearranged for the murder of an entire family, which was put into execution with reckless daring.

Nor may the opinions of the said judges of the Sacred Rota requiring that the assemblage be directed against the Prince of the State, and not to commit some other crime, stand in the way; because if this qualification were accepted as true the

decree would be vain which had raised the act to the crime of *læsa majestas* and rebellion; for this crime would result plainly enough from the deed itself, and from the intent to disturb the peace of the Prince and the State. And so far as the opinion affirmed by these authorities does have foundation, it can be applied when we investigate the order of the Constitution, and not of the Banns issued later. For this decree would prove vain and useless if the capital penalty, imposed thereby against those assembling armed men, could be applied only when the crime for which the assembly was made was punishable with the same penalty. And even if this necessity be admitted, the application of the Constitution cannot be avoided, because no plea of injured honour can be alleged in excuse for the murder of Pietro and Violante, and it had not at all been proved as regards Francesca Pompilia.

Likewise the preparation and use of prohibited arms is also punishable with the capital penalty, if we investigate the order of the Banns and Constitutions of Alexander VIII., of sacred memory. Nor is this sufficiently avoided by the response given by the Defence that it is included in the main offence; so that no greater penalty can be inflicted for it than the main crime itself deserves. For what we have said above as regards "an assembling" is opposed to such a confusing of the punishment of the Banns, and the authorities adduced in our past response, § *nec delationis*, affirm the contrary. And those authorities cited for the contrary opinion should be understood to apply only when one is dealing with an insult, or with murder committed in a quarrel, or in self-defence, or for the sake of immediate reparation of honour. [Citation.] The difficulty is at an end in our case, because of the clear disposition of the Banns, which expressly declare and command that the penalty for the carrying of arms is not to be confounded with the penalty of the crime committed therewith. Nor does the response given by the Procurator of the Poor seem strong enough to avoid this; namely that when, under the common law, the Banns receive only a passive interpretation, merely the crime of preparing and bearing arms for committing murder is considered; but that it is otherwise if the arms are borne, for no ill end, and then a crime is committed with them. Because it would be too harsh for one bearing arms for no ill end and then sinning with them, to suffer a greater penalty than one preparing arms to commit crime, and carrying his purpose into effect. Hence these Banns never can receive such an interpretation. For since by them

the carrying of arms is forbidden as pernicious and as affording occasion to commit crime, much more should the bearing of them when purposed for committing crime be considered prohibited and punishable with a rigorous penalty. This is especially true when we consider the declaration that the crimes are not to be confounded with one another.

There is left, finally, one other qualification, which greatly aggravates the crime, namely the violating of the home assigned as a prison with the consent of Abate Franceschini. And this is so in spite of what can be alleged as to Guido's ignorance of this circumstance. Because in the said writing prepared in Italian for giving true notice of the fact [Pamphlet 10], it is asserted that the entire management of the cause was left and committed to this same brother, since Guido had left the City. Hence it is quite incredible that Guido was not informed by him of so important a matter. And as concerning the distinction between violating a public prison and mere custody in a home under bond, and as to offence permitted therein for honour's sake, we have given sufficient response in our past argument, § *Quibus accedit* and those following. For the same reasoning is applicable in both cases, since in both the person detained is under the protection of the Prince whose majesty is accordingly insulted. And the excuse would hold good if we were arguing about the resenting of an injury offered in prison. Under these very circumstances do those authorities adduced by the Defence speak, as is evident from their recognition of them.

Therefore, in the present case many grave qualifications are present, which increase the crime, and on account of these his Honour, the Advocate of the Poor, admits in § *Agnoscit Fiscus* that the penalty should be increased. Nor can such increase of penalty be made good except by death. For even if the adultery were proved, as it is not proved in our case, the mere murder of the wife, when committed after an interval, could demand only a diminution of penalty, according to the more lenient opinion. Hence the justice of the decree for the torment of the vigil should be said to be sufficiently asserted and vindicated against opposing reasons. And now that confession has followed, there remains only that condign punishment be inflicted in expiation of this awful crime.

GIOVANNI BATTISTA BOTTINI,
*Advocate of the Fisc, and of the Reverend Apostolic Chamber.*

[File-title of Pamphlet 14.]

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*By the Most Illustrious and Most Reverend Lord Governor in Criminal Cases:*

# *ROMAN MURDER-CASE*

*with qualifying circumstance.*

*For the Fisc, against Count Guido Franceschini and the others.*

*Response of the Lord Advocate of the Fisc.*

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*At Rome, in the type of the Reverend Apostolic Chamber,*
1698.

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# ROMANA HOMICIDIORUM CUM QUALITATE

[Pamphlet 14.]

Most Illustrious Lord:

The matters deduced by his Honour, the Advocate of the Poor, for the defence of Guido Franceschini, who is accused of three murders with very grave qualifications which magnify the same, are of no real force in proving [first] that he should not be punished with the ordinary penalty of the *Lex Cornelia de Sicariis*, inasmuch as he had confessed these crimes, and [secondly] that simple torture only should be demanded for gaining the truth as to these, and that the torment of the vigil should be omitted. I will attempt to show this, in responding to these points singly, so far as the excessive scantiness of time admits, and will keep my eyes on the rights of the Fisc, as the duty of my office and the dire atrocity and inhumanity of the crime demand.

The chief ground taken by my Lord consists in placing on an equality [first] a case of vengeance taken immediately by the husband with the death of the adulteress found in her sin, and [second] that of one slain after an interval when the wife is plainly convicted of adultery (as he claims is proven in our case). But this falls to the ground both in fact and in law; and hence the inference for the moderation of the penalty drawn from this same parity is likewise shown to be without foundation.

In fact, the proof of the pretended adultery is quite deficient according to what I deduced fully in my other information. In that, I have confuted singly his proofs, or rather suspicions, resulting from the prosecution, to which his Honour attaches himself. I have shown that the wife's flight in company with Canon Caponsacchi, the pretended lover, was for a legitimate reason (namely the imminent and deadly peril, which she feared), and not from the illicit impulse of lust. The participation and complicity of the Canon Conti and Signor Gregorio Guillichini, relatives of the Accused, in forwarding the same, ought to prove this. For they would not have furnished aid if she were running away for the evil purpose of violating her conjugal faith, even to

their own dishonour. But they well knew the necessity of the remedy, and that it was to free her from peril. And a witness for the prosecution in the same trial for flight swore to having heard this from Signor Gregorio. And they gave their aid in carrying this out.

Nor is it at all relevant that, in the decree in condemnation of the same Canon to banishment in Civita Vecchia, the title of "carnal cognition" was written down; because, as was formerly responded, the alteration of that was demanded, and likewise the substitution of a general title relative to the trial. And since no proofs of it resulted either from the prosecution or from the defences which the unfortunate wife (who was dismissed with the mere precaution of keeping her home as a prison) could have made, if she had not been so horribly murdered, and since the said decree, issued without her having been summoned or heard, would be void, the inscription made by the judge in the records as a title could not convict her of that crime; but only the truth of the fact resulting from the proofs should be considered. [Citations.]

I acknowledge that the Accused should have been considered worthy of some excuse if he had slain his wife in the act of taking her in flight with the pretended lover; since for this purpose, not merely the absolute proof, but the mere suspicion of adultery committed, would be enough. [Citation.] But when, after neglecting the pretended right of private vengeance, he sought out with entreaty public vengeance, by having her arrested, he could not thereafter, while she was under the public authority of the judge, take private vengeance by butchering her who had no fear of such a thing. The suspicion of a just grievance, which is difficult to restrain when aroused, excuses the husband in part, if not entirely, whenever he takes vengeance immediately under the headlong impetus of anger. But when the vengeance is after an interval, and while the cause is in the hands of the judge, and the victim is imprisoned at his own instance, this does not hold good, as will be proved further on, by showing the irrelevance of the principle assumed.

Nor does the glossa in the alleged text, in the law of Emperor Hadrian, stand in the way; because it speaks of a son taken by his father in flagrant adultery with his step-mother, and killed by the father immediately. [Citation.] And there is a wide difference between a father and a husband killing after an interval; because, as Farinacci adds, a father has the greatest authority over his son, and by ancient law could even kill him.

And certainly the husband does not have this. The law also more readily excuses a father, because he is always supposed to take good counsel for his child, from the mere instinct of paternal love. But one does not have this same confidence as regards a husband, who is accustomed to conceive unjust suspicion of his wife more readily. Hence it is not permitted that he kill her on mere suspicion after an interval. Nor is he in any way to be excused on this account, according to the text. [Citation.] "The devotion of a father's love usually takes good counsel for his own children, but the hot precipitancy of a furious husband should readily be restrained." [Citation.]

This is so far true that a father is not excused unless he kill, or at least severely wound, his daughter along with the adulterer; so that it should be attributed to fate, rather than to paternal indulgence, that she escape death. And this has been passed by law-makers for no other reason than that such a grievance, provoking to rash anger, is required for excusing a father, so that he may not spare his own daughter. But since this statute is not to be found among the laws about husbands, the manifest difference between the two, because of the husband's excessive readiness to seize a suspicion and fly into a rage against his wife, is plainly revealed.

Nor is mere suspicion a sufficient ground to diminish the penalty for a husband who kills his wife after an interval. This is evident from the very authorities excusing him in such a case, whenever the adultery is proved either by the confession of the wife or by other proofs, so that she can be said to be convicted of it. [Citations.] Bertazzolus says: "I have seen the matter so regarded in the contingency of such a fact, and the husband has been excused who had killed an adulterous wife, not found in the very act, but whose adultery was really and truly existent and was quite plainly proved." Hence it is plain, from those very authorities adduced by his Honour, that the husband who kills his wife after an interval is not excused because of mere suspicion, or because of an adultery case which is still pending judgment, and which he himself had brought.

In law, also, is his assumption proved to be without foundation, which places on an equality [first] vengeance taken immediately, that is, in the very act of taking the wife in adultery, or in acts immediately preparatory, which lead him to such a legitimate belief; and [secondly] vengeance taken after an interval, even when the adultery is evident from such proofs as render it perfectly clear. There are many authorities who urge

the diminution of the penalty for the following reason which they give—that the sense of injured honour always keeps urging and provoking to vengeance, and that a wife may be well enough said to be taken in adultery when she has either confessed it or been convicted of it. And these authorities have been collected with a full hand by his Honour, and I myself recently pointed out one of them. But the contrary opinion is the true one, and is accepted in practice. To this fact the most distinguished and most skilful practitioners of our time in criminal law bear witness. These are [first] Farinacci, where, after he has first learnedly answered the reasons and authorities adduced to the contrary, he concludes that he undoubtedly believes so as to the law in the case, and counsels that it be so held, unless we wish to err; and [second] Canon Rainaldi, who also filled the office of Procurator of the Poor with the highest praise, and so it may well be believed that he was very strongly inclined toward mercy and commiseration, and that he therefore adhered to this opinion in the mere zeal for the truth. And he declared it to be the truer and the more advantageous to the State, and said that one should not depart from it in giving judgment. [Citations.]

But even if the conflict of authorities might in some manner favour the diminishing of the penalty for the Accused, if there had been excess merely in the matter of time; yet he is still to be considered as inexcusable, so that he cannot escape the ordinary penalty, since so many qualifying circumstances are present which increase the crime; and any one of these is punishable with death.

To this end we should first consider the assembling of armed men, which is so very injurious to the public peace, and constitutes the crime of "conventicle." In the Banns, chapter 82, this is punishable with the death of its author. It is also declared that it is enough to establish this crime if four armed men are assembled. This had been formerly prohibited under the same penalty by the seventy-fifth Constitution of Sixtus V. of blessed memory, which had raised it to the crime of rebellion, for whatever reason it might be done. Spada proves this fully, asserting that it should generally be so understood in all cases in which the assembling of men has been prohibited.

To escape or evade this capital penalty, it is not a relevant excuse that a husband may kill an adulterous wife by armed men brought together. For, however it may be when a husband wishes to kill his wife taken in adultery, and is afraid that the armed adulterer can resist him, and that he may have servants

for his aid (in which case he himself cannot take vengeance otherwise than by calling together helpers, as Caballus advises), yet in the case of vengeance taken after an interval, and while the wife is under the power of the judge, and on the mere suspicion of adultery, such convocation of armed men cannot be said to be at all permissible. For the seventy-fifth Constitution of Sixtus V. of blessed memory, prohibits such assembling even on lawful occasion, as a disturbance of the public peace. [Citation.] And so it is much more to be prohibited and much the rather to be expiated with the ordinary penalty both of the Constitution and of the Banns, since it was made for an illegal and damnable end, namely to kill his wife, and his father-in-law and mother-in-law along with her. This is rendered plain by the assertion of the very authorities who excuse from the ordinary penalty a husband who takes vengeance after an interval. And indeed the path of private vengeance, which is hateful to the law, would be strewn all too broadly if, after the husband had chosen legal vengeance and had neglected to avenge his pretended injury in the act of seizing his wife in flight with the pretended lover, he should be excusable in taking vengeance after an interval with all security, by means of armed men, and in killing her while entirely off her guard, and under the power of the judge, without the slightest risk to himself.

This is true in spite of the response which might favour him, that he neglected to take private vengeance because he was unarmed, and the wife was found in the company of the Canon, who was a bold, sturdy man. The husband should impute it to himself if alone and unarmed he was pursuing his wife, fleeing with the lover. For then he could take associates with better right, and fully armed could pursue her; and in such a case his assembling of men would be somewhat excusable. But this is not so when he takes such awful vengeance after an interval. For if we consider the reason why a husband killing an adulterer or his wife is punished with a milder penalty according to the quality of the persons, if the vengeance follow in the very act—namely, rash anger, which cannot be restrained—the assembling of armed men to do that after an interval is plainly revealed to be illegal. For rash anger would cause him to expose himself to the risk of resistance by the adulterer, who is not accustomed to approach unarmed. Because of this risk the penalty is diminished, since it shows that the husband carelessly exposed himself thereto, because of the violence of the anger which blinded him. This is [not] the case in vengeance taken after an

interval, taken with all forethought and by means of armed men, so that the husband cannot be afraid that any evil will befall himself in carrying it out. Such preparation is quite repugnant to rash anger, which cannot be restrained, and from which excuse is drawn. [Citation.]

The second qualification that increases the crime results from the kind of arms with which the murder was committed, for these were prohibited by the well-known decree of Alexander VIII. of sacred memory. This was not merely for the carrying, but even for the keeping, introduction, or manufacture of them for any cause whatever, even under the pretext of military service or the execution of justice. Hence they would be all the more prohibited [when carried] for the purpose of taking such impious and awful vengeance by the destruction of an entire family.

Nor is the carrying of arms in such a case to be confused with the main crime of murder; because when a greater penalty might be imposed for the former, as when excuse for the killing is drawn from injured honour, the carrying of the prohibited arms comes to be punished with the ordinary penalty. [Citations.] Nor are the authorities adduced to the contrary worthy of attention, for they hold good in the circumstance of murder done in self-defence or because of provocation in a quarrel. [Citation.] Still further, these are not applicable because they do not speak within the bounds of the Constitution, which so distinctly prohibits such arms. For Policardus speaks of the *Regula Pragmatica* which takes for granted the qualifying circumstance of the crime of treachery from the kind of arms, and he asserts that this order ceases in murder for self-defence, or on provocation in a quarrel, when committed with the said arms. But this judgment differs by the whole heaven from the sanction of our Constitution; because the latter was issued for the very purpose of entirely exterminating so pernicious a kind of arms.

The third qualification likewise increasing the crime is murder committed because of a lawsuit; for by the well-known decree of Alexander VII. of blessed memory, this was increased to the crime of rebellion and *læsa majestas*, punishable with death and the confiscation of goods. This qualifying circumstance as regards the slaughter of Pietro and Violante cannot be denied because the Accused had won a victory in the lawsuit. And hence the offence should [not] be said to have been committed because of just anger for injury inflicted upon him; [first] by the pretence of birth, which was revealed after the marriage had

been celebrated, in order that they might break the marriage contract; [second] by the publication of pamphlets greatly to his injury; and [third] by their conspiracy in the flight of his wife to the injury of the honour of the Accused and of his entire family. They claim that since this cause for avenging the injury is graver than that arising from the lawsuit, the murder should be attributed to it, as more proportionate thereto.

But the victory he obtained had regard only to the actual possession of the property while the lawsuit was under appeal. And the parents were still pursuing this suit, so that that cause continued and could not be said to be extinct. The injury, indeed, from whatever different causes it may be claimed to have arisen, really came from this same lawsuit. And this had regard both to the pretence of birth revealed, and to the insults contained in those pamphlets concerning the meagreness of the family affairs (which was quite the contrary of the boasted riches, in the hope of which the marriage had been made), and concerning the ill-treatment which the parents of the wife had suffered in the home of the Accused. For by this marriage agreement food was to be furnished them. Still further, as to any conspiracy in her flight, much less as to any complicity in her pretended adultery, we have no proof at all. And so the cause of hatred conceived because of the lawsuit kept always urging him, and it does not redeem the criminal from the penalty inflicted by the decree of Alexander, because the suit might have been injurious to the Accused, either in his substance or in the manner. For this indeed presents such a cause as is always required in premeditated murders. Nor does it exclude the qualifying circumstance of the lawsuit, and indeed confirms it; since it is explicitly presupposed that injustice had been committed. Otherwise an opportunity to take private vengeance would be permitted, which in all law is forbidden, especially when a lawsuit is going on; because then the majesty of the Prince is insulted, as was proved in my other information, § *Accedit ad exasperandum.*

The fourth and, indeed, a very grave qualifying circumstance is drawn from the place in which the crime was committed, namely in the home of those slain. It was also in an insidious manner, by pretending the delivery of a lettter sent by Canon Caponsacchi. For one's home should be the safest of refuges to himself, as was proved in our other information, § *plurimum quoque.* The manner indeed savours of treachery, as is proved not merely by committing murder under the show of friendship,

but also at a time when the power and obligation of special caution in the one slain had ceased. [Citation.] And this is far from doubtful in our case, for the wretched parents could have had no such apprehension from the Accused, who was staying in his own country.

To these is added a fifth very grave qualifying circumstance, drawn from the place with respect to the very wretched wife. For she had been imprisoned at the instance of the Accused, and was detained in the home of her parents as a prison with the consent of the Abate, his brother; and hence she was under public safekeeping, which it were wrong for the Accused to violate without incurring the penalty of *læsa majestas*. [Citation.]

This very grave qualifying circumstance, which increases the crime, cannot be avoided by the dual response given by his Honour; first, that we are dealing with no prison properly speaking; second, that one giving offence, or killing in prison is excused on a just plea of injured honour. Neither of these excludes this qualifying crime; for the unsuitability of a prison would be considerable if we could defend a violation of it made by one in prison and so to avoid his own injury, but if it were otherwise when we were arguing in his favour for avenging an injury to himself in a home assigned as a prison. The plea of injured honour can help one only if the offence in prison follow in self-defence under the very impulse of rash anger. In such circumstances the authorities adduced by his honour would hold good. But this is not so in excusing vengeance taken after an interval upon one imprisoned even at the instance of the slayer. For then the qualifying circumstance of the place greatly aggravates the crime, as it is indeed injurious to the public safekeeping and involves treachery, etc.

It is therefore very evident that the murders committed by the Accused have many qualifications mingled with them, which greatly magnify them. And however far the opinion has weight which urges the diminution of punishment for one killing an adulteress after an interval, and however much the pretended adultery may be declared to have been proved in the manner required to gain such diminution, even by all those in favour of the milder judgment, still this penalty, because of these qualifications, would have to be increased and the ordinary penalty of the *Lex Cornelia de Sicariis* in its entirety would have to be demanded. And therefore it seems superfluous to argue about the kind of torture, since in view of these very urgent proofs of which I understand there is no doubt, and in view of the wea

known powers granted to the Most Illustrious Governor, it is quite within limits that the crime should be punished with the ordinary penalty, even if the qualifying circumstance of special atrocity were not present, so that the penalty should not be increased on that account.

But such a qualifying circumstance is not wanting here, as it results indeed from the treacherous manner and from the charge of *læsa majestas*, which is provable in our case on three grounds; namely offence committed during a lawsuit, the assembling of armed men, and the violation of public safekeeping, because of the home assigned as a prison. For according to the Apostolic Constitutions, the crime would be raised to that degree upon the basis of the first and the second; and there should be no doubt as to the power of the Prince to do so. [Citation.] Spada asserts that in such a case, so far as all the effects of law are concerned, it should not be considered a matter of controversy that the qualification of special atrocity, which is in agreement with such a crime, is to be revoked. And in our very circumstances Spada gives this opinion in demanding the torment of the vigil.

Nor can that qualifying circumstance of the person concerned, so far as it is proved, stand in the way of such infliction of the torment of the vigil, which does not allow the death penalty upon a nobleman to be made worse, as is accustomed to happen in very atrocious crimes (because noble blood should not be degraded by such increase of penalty which adds infamy). But for this purpose merely the nature of the crime is considered, and not the quality of the person, which would hinder the execution of a penalty carrying with it such infamy. Otherwise the torture of the vigil never could be inflicted upon noblemen, priests, and men in religious office upon whom an infamous penalty cannot be inflicted. But nobility affords no privilege in the manner of torment, especially in very atrocious crimes [Citation], etc.

GIOVANNI BATTISTA BOTTINI,
*Advocate of the Fisc and of the Apostolic Chamber.*

# RESPONSE

*To the Account of the Fact, and Grounds in the Franceschini Case.*

[Pamphlet 15.]

The splendid statue of Nebuchadnezzar fell because it was not firm on its feet. So fall to ground those imagined and forced suppositions concerning the origin of the present execrable murder, which the Anonymous Writer in his printed pages [Pamphlet 10] has tried to insinuate into the dull heads of the crowd. This murder was committed here in Rome upon three wretched and innocent persons, by Guido Franceschini, assisted by four men who were armed with prohibited arms, who were brought together for that purpose by the influence of money, and who were kept insidiously for many days at his expense. [These pages claim that] the crime arose from justly conceived anger: [first] because eight months earlier Guido had discovered Francesca Pompilia, his wife, sinning against him in his own house at Arezzo, and [then] because she had fled in company with Canon Caponsacchi of the same city back to Rome to place herself again under the protection of Pietro and Violante Comparini, who had raised her as their daughter; and [thirdly] that the suspicion had also grown upon Guido that in her precipitate journey she might have broken with the Canon her marriage obligations, since certain love-letters were found upon her, from which he unreasonably deduced her adultery, and he supposed that the said Caponsacchi was condemned as an adulterer to a three years' banishment at Civita Vecchia. And these pages try, under the pretence of injured honour, to render Guido's crime less grave and to excite compassion, no less in foolish persons than in the hearts of our most religious judges, for the purpose of disposing them toward a milder penalty and one out of keeping, according to the laws, with the quality, form, and circumstances of this crime. And this in substance is all that is claimed by the author of the pamphlet entitled *Notizie di fatto, e di ragione nella Causa Franceschini.* But they are indeed very much at fault in their account of that tragic history, which

had a different beginning and an occasion independent of the imagined ground of honour. In that pamphlet it was presupposed all too bitterly, that Guido's honour had been injured by his wife; whereas she always preserved her sense of shame and had well observed the laws of conjugal honour, as is plainly shown in this present article.

That this sad catastrophe, this slaughter of an entire family did not proceed (as the Anonymous Author claims in his pages) from the pretended sense of injured honour, but from damnable greed, one can very clearly see by considering the fact that for this very object the unfortunate marriage with Francesca Pompilia was entered into by Franceschini. For it was taken for granted that after the death of her supposed parents she would surely fall heir to a considerable property. All the more ought we believe that the crime was committed because of hatred arising from the three lawsuits then pending; that is, two in the civil courts and a third in the criminal courts. One of these was as to the legitimacy of the parentage of Francesca Pompilia the wife, and the nullification of the dowry-agreement, and was brought by Pietro in the Tribunal of the Sacred Rota. The second suit was for divorce, and was brought by the said Francesca Pompilia before the Vice-Governor. The third is a criminal suit, as to the pretended adultery, which is still pending in the Tribunal of his Excellency the Governor; this latter was brought under the very impulse of greed, to gain the entire dowry. Since this fact was conclusively evident in the case introduced by the said Franceschini, he was deceived in this hope of gain by the failure of the proofs, which the defence caused to vanish utterly, as they could do by means of the wife. Hence he broke into an excess so tragic and so deplorable as to reveal clearly the tricks and frauds practised for the purpose of bringing about that marriage. Here then are the plain proofs that this is the truth.

Guido Franceschini was staying at Rome in idleness, out of the service of a certain Cardinal, without a soldo, by which service he had provided for himself up to that time. His usual loafing place was in the shop of certain women-hairdressers, where he often announced his intention of setting up his house with some good dowry. He also boasted of the grandeur of his country, his birth, and his property. By his promises he induced this woman to find him a chance for such a marriage, and she informed him of the opportunity in the said Francesca Pompilia. The latter was then esteemed to be the true and legitimate

daughter of Pietro and Violante Comparini. He set about this enterprise with the aid of his brother, Abate Paolo, using the astute prudence with which the malign serpent advanced his designs in Paradise to subvert Adam into disobeying God's precept and into eating the forbidden fruit; for [Satan] considered the matter in this way: "If I wish to assault the man directly, who is so strong and so resolute, he will turn and give me a sure repulse. It is therefore better that I first tempt the woman, who is of a fickle nature and soft-hearted." And he made his first attack upon Eve; because when he had gained his point that he might have her, by her means it would be easier for him to win over Adam. "For he first attacked the mind of the weaker sex," are the ingenious words of St. Hilary.

And so for this purpose did the said Guido devise the marriage with the knowledge of his brother, Abate Paolo, and likewise to this point he succeeded in it. For he avoided talking with Signor Pietro about the marriage, by whom it would probably have been refused, and wished first to tempt Violante, his wife. Because by gaining her he would the more easily overpersuade her husband to give his consent. Nor was it difficult for him to astound the woman, because he knew how to impress her very well with the thought of the grandeur of his country, of the first-rate nobility of his birth, and of the great income from his patrimony, amounting to 1700 scudi. And he gave her an itemised account of it written with his own hand. She was enchanted thereby and, without getting any further information about the matter, she was able to persuade her husband and to extract from him his consent to it. This proves what we read written in Proverbs: "A wife takes captive the soul of her husband." He speaks this of Mordecai who availed himself of Esther, when he wished to placate the anger of Ahasuerus against his people; of Joab, who used the services of the woman of Tekoah when he wished to soften the anger of David against his son; and of the Philistines of Timnath, when they wished to gain from Samson the secret of the riddle proposed to them at the marriage feast.

The credulous but deceived woman so cajoled her husband that she at last induced him to sign the marriage agreement providing for a dowry of 26 bonds and, at the death of the said Comparini, for all their possession, amounting, as the Anonymous Writer acknowledges, to the sum of 12,000 scudi. And, for the purpose of making the said Franceschini guardians of the said property even during the life of the Comparini, they had to give

up even the income of it. This property consisted of numbers of profitable and well-situated houses, and of bonds. The Franceschini also assumed the obligation to take the said Comparini to the city of Arezzo, and there to feed, clothe, and provide them such service as they would need. This promise was made not without the hope that on account of the insults and sufferings which they would have to bear their death would be hastened. And thus Guido would become the absolute master of their property.

After having signed the said agreement Pietro absolutely refused to go on with the effectuation of the marriage of the said Francesca Pompilia, with the abovesaid Guido, of whom he had had few good reports; and these were far different from the pretended riches and vaunted nobility. Hence one may well say of him what Persius concludes in his fourth Satire: "See what has no real existence; let the rabble carry off their presents elsewhere. Dwell with yourself, and you will know how meagre your furnishing may be."

At any rate, the said Guido joined the said Violante, whom he had imbued with his flatteries and endearments, spurning any further consent of Pietro by keeping him in ignorance of it. And without the knowledge of the latter, Guido contracted the marriage with the said Francesca Pompilia in the face of the Church. And he evermore discloses by this act, which shows so little reverence to the promiser of the dowry, his own greed, not merely for the amount which had been assigned to him in the marriage agreement, but also for the rest of Pietro's property. For he felt sure that after Pietro's death the property, by the entail of the ancestors, would necessarily fall to the said Francesca Pompilia, who was already his wife.

When, after a few days, Pietro found out that the marriage had taken place, though he reproved the deed vigorously, yet because what is done cannot be undone, and by means of the cajoleries of Violante his wife, and the interposition of another Cardinal, whom the Abate, Guido's brother, served, the poor old fellow was constrained to drink the cup of his bitterness. And he came, as it were by force, after many months to the stipulations of the dowry agreement. He quickly began to feel the effects of Franceschini's trick, since Guido had scarcely a single soldo of his own to pay the first expenses of that marriage agreement. Hence, to supply these, he was obliged, against the wish of Pietro, to free from entail five of the bonds, or more, by the authority of the Auditor of the Most Illustrious Governor, and

to sell them for meeting these expenses. Hence one may see clearly that the primary object of Franceschini in this proceeding was to trick Pietro, and Violante his wife, and their poor child, to enrich himself with the property of others.

He can no longer deny the fraudulent pretence of vaunted riches of the Franceschini in the note written in his own hand and given to the Comparini. And indeed the Anonymous Writer confesses it openly. For, in order to free Abate Paolo from complicity in that trick, the latter pretended that he took Guido his brother to task roundly for the alteration of the said note. The said Comparini very quickly found this out. For as soon as they had gone to Arezzo they learned that the property of the Franceschini family was very slight. And such were the miseries and abuses that the Comparini had to suffer in victuals and in harsh treatment that they were obliged to return to Rome after a few months; for they were locked out of the home and had to go to the tavern to lodge; and these abuses were for the purpose of shortening their lives, either by their sufferings, or the fury caused thereby. And this fact is very evidently proved by the rent-rolls taken from the public records of the city of Arezzo. From these it is shown that the said Guido did not possess a single dollar's worth of the settled property mentioned in the said note. It is also untrue that he and his family enjoyed the highest rank of nobility in the city, because, from other extracts drawn from the public records of the city, it is evident that his family is of only secondary rank.

The abovesaid crafty and fraudulent methods of dealing, which came to light long before the murder had followed, and which became known in this Court and in Arezzo, can well show that greed was the origin of this premeditated slaughter (which was put in execution in such a horrible manner, as is notorious) and not the pretended ground of injured honour. For, according to common opinion, Abate Paolo, no less than Guido his brother, had worked the tricks exposed as above. And by men they were suspected of subterfuge and craft, so that this made them more sensible of injury than anything else. Hence they could no longer boast the grandeur of their nobility and the affluence of their riches, which they had spread abroad on the lips of the crowd. And every one avoided having anything to do with them, as persons of bad faith and as usurping a glory to which they had no real right.

The greediness of this self-interest became greatly inflamed; so that in these Franceschini brethren one may see the common

axiom verified: "Craft is deluded by craft." That is to say, Violante was urged on by remorse of conscience and by the abuses and injuries received in their house, and was constrained by her confessor at the time of the Jubilee to reveal to Pietro, her husband, that the said Francesca Pompilia was not their daughter, but was of a false birth. And this seems very probable in view of the age of 48, which Violante had reached, when she pretended to be pregnant with her; because in the fourteen years, during which she had lived in lawful matrimony with Pietro, she had never had children. Also, by witnesses then living, she could afford conclusive proof of the pretence of the birth. And when notice of that had been given to Abate Paolo, that he might come to some compromise over the annulling of the dowry contract for the entire patrimonial property, he spurned the kind offers made to him through the meditation of friendly persons and refused every means of peace. Then a warning (as to the falsity of the said birth and the illegality of the dowry contract) was served on him by Pietro before Monsignor Tomati. And conclusive proof of the birth was given by six witnesses, who were examined before the judge with questions offered in behalf of the said Franceschini. Yet the same judge saw best to forward the case during the mere immediate possession, by continuing to the said Francesca Pompilia the quasi-possession of her parenthood. Nevertheless, an appeal was taken from his sentence, and it was committed to the Sacred Rota, before Monsignor Molines, where it still hangs undecided as to the principal point of the pretended parentage and the nullity of the dowry contract. For righteous judgment in such a tribunal the judge doubtless awaited for conclusive proofs of the said pretence of birth. The nullity of the dowry contract would none the less be decided, because it had made declaration that the said Francesca Pompilia was their daughter. And with this falsehood the advantage which the Franceschini had obtained for their own selfish gain by such tricks would cease.

All this is proved by the reflection that the trick of Franceschini was made public, not merely in Rome, but in Arezzo, and that he also was deluded by a similar artifice because of the proofs already made, while judgment was pending, that the said Francesca Pompilia was not the real and legitimate daughter of the said Comparini. On the ground of these far-fetched suspicions Guido made pretence of a reason for maltreating her with insults and blows, and more than once he provided himself with a sword

and fire-arms to take her life. He did this to take vengeance upon her for his own trick, by which he had been deluded. Therefore it was quite right for the poor wife, who was of the tender age of sixteen years and a stranger in the place, to avoid the rage of her husband at different times by fleeing for protection to Monsignor the Bishop, and to the Governor, or Commissioner of the City, that they might put some check upon the cruelties she was suffering. And although these persons by their interest in the matter succeeded for the time in putting a stop to the threats, yet the poor intimidated wife always passed her days shut in a room. And her fear was greatly increased because she saw that the said Guido had made a mixture of poison, with which he threatened he would take her life without the uproar attendant on the use of arms; and thus he would be the surer of his crime going unpunished. Now if, even at a time when no shadow of suspicion of dishonour had fallen, the husband was contriving the death of his wife, the Anonymous Writer might well abstain from soiling his pages for the purpose of proving that the slaughter of those murdered had had its origin in the impulse to repair offended honour. For his pages would have had much better foundation if he had consulted the truth, namely that these crimes had arisen from deluded self-interest.

The poor wife in her agitation over these difficulties that we have told, had nothing else to do but think of finding refuge from the death she feared. And when her mind was somewhat sharpened by its vexations, she intrusted herself to the Canon Conti, who is closely related to the Franceschini, and declared to him her miseries, her perils, and her just fears (although they were not unknown to him), in order that he might try to give her consolation by placing her life in safety. He was touched with living compassion and was moved to free her therefrom by pity for the grievous state in which she was. And he well knew that there was no other escape than flight from the home of her husband, according to the saying of the poet [Virg. A. III. 44]: "Alas, flee the cruel earth, flee the greedy shore." But not being able to give her aid in this affair, he suggested to her that for putting the matter into execution, there was no better person to the purpose than Canon Giuseppe Caponsacchi, his friend and intimate, whose spirit had stood every test. And when Conti had spoken of it to him, although Caponsacchi saw difficulty in aiding the desire of the young woman, because he did not wish to incur the anger of the Franceschini, yet at last the impulse of

charity and pity prevailed upon him to free this innocent woman from death. And when his readiness for the attempt was reported to her by Conti, she did not fail to inflame him with more messages and letters, even containing alluring endearments, for the effecting of her escape. Yet she also kept during all this time her constant desire of not violating her marriage-vow, since in some of these letters she praises the Canon for his chastity, and in others reproves him for having sent her some rather improper octaves. She also warned him against degenerating from the good behaviour, on which she had congratulated herself and had planned with him the flight.

While her husband and the whole household were asleep, both of them, with the assistance of the Canon Conti, set out upon a headlong journey by post, without losing a moment's time, except for changing horses; and they arrived by night at Castelnuovo. And although the host had prepared a bed for rest, nevertheless they did not avail themselves of it. For Caponsacchi was always solicitously watching to see that the driver prepared other horses, to continue the journey to its end. Nor did the host of that tavern, when cross-examined in the prosecution for flight, ever dream of bearing witness that the wife and Caponsacchi had slept together in the bed that was prepared, even though Franceschini, to his own dishonour, had published the contrary, that he might, by the pretence of injured honour, throw a false light upon the true grounds of the murders committed by him.

In the meantime her husband arrived. When his wife saw him, did she, timid as she was, shrink back? Did she acknowledge herself guilty of any sin, or of any wrong done to him in guarding her purity and modesty? No! But all on fire, though she was at the tender age of sixteen years, as I have already said, the constancy of her own honour rebuked him for the tricks and abuses which he had employed, and for the threats and blows he had very often given her, and for the poisonous drugs he had prepared to take her life. And [she declared] that she had been obliged to do as she had done, to find an escape by flight from graver peril, and to return to the parental love of the Comparini, who had raised her as their daughter; and that she had always been careful to keep her wifely honour intact. The same rebuke was made by Caponsacchi, who during the flight had religiously observed the limits of due modesty.

What did Franceschini answer? What did he try to do, although he was armed with a sword against his defenceless wife

and against Caponsacchi, who had with him only a little dagger? Nothing, indeed! according to what the witnesses who were present deposed; because he stood convicted by the just remonstrances of his wife. But what did he do? He gave up all vengeance, which by right of natural law, or much more by civil law, he might have taken for that; and, as the Anonymous Writer goes on to boast in justifying him for this execrable crime, he implored the arm of the Law and had his wife and Caponsacchi arrested by the authorities of the place. And at his own instance they were conducted as prisoners to the prisons of the Most Illustrious Governor of Rome, before whom Guido charged them with flight. Then, not content with this, he brought forward that other charge of supposed adultery committed with the said Caponsacchi. He also outdid himself greatly by making noisy petition to the Supreme Pontiff for their punishment, and the latter sent back his entreaties to Monsignor the Governor. He was brazen enough to demand, with a new complaint, that his wife should be declared an adulteress and that to him, according to law, should pass all the gain of the dowry. This in substance clearly proves that he did not insist on vengeance for the reparation of his honour, which he himself had passed by, but he did all this for the sole object of gain, that is to win the dowry.

What efforts, what exclamations, what diligence did Franceschini and Abate Paolo, his brother, not use to have the wife declared an adulteress and to gain the desired lucre? Monsignor the Most Illustrious Governor knows it, who endured with all forbearance their passionate pressure upon him. Signor Venturini, judge in the case, knows it. And all the other judges and notaries of the Court, who were nauseated by their importunity, know this very well. Then since judgment could not in any event fall according to the designs of the Franceschini, as there was no proof in the trial of any offence, either in the wife or in the said Caponsacchi, the most Religious Judges, who in prudence were judging rigorously (for the purpose of giving some satisfaction to the Franceschini brothers in their strong insistence, rather than because of the obligations of justice), banished the said Caponsacchi to Civita Vecchia for three years. Caponsacchi straightway obeyed this sentence, and has never left the place assigned him. The case was left undecided as regards the wife, who was placed in the Nunnery of the Scalette as a prison. Then when there was some question as to her pregnancy, with equal prudence, she was removed from the nunnery by the order of the Most Illustrious Governor; for it was

not decorous that she should give birth to a child there. And with the consent of the said Abate Paolo she was placed in the home of the said Comparini under security of 300 scudi to keep it as a secure prison.

On this point the Anonymous Writer disputes too bitterly what was written learnedly by the Fisc, and claims that the consent of the said Abate Paolo had not been given. But the great and incorruptible integrity of the Fisc is known to every one; because of which he would be unwilling to give his word in writing for what was not evident on the surest proof. Yet the fact of Abate Paolo's consent is plainly proved, since he in person so agreed with Monsignor the Most Illustrious Governor and with Signor Venturini, the judge, jointly. And he exacted from Pietro Comparini the obligation to supply her with food without any hope of recompense. And this was so carried out, although the quality of the Comparini did not deserve so indecent a rebuke on account of having been too indulgent with them.

With like bitterness it is denied that the said Abate Paolo had power of attorney from Guido, his brother, enough to give such consent; because, in making such a provision, Monsignor the Governor had no need of the consent of the parties. And, even if he had wished to show Abate Paolo such courtesy and urbanity, the Author should not reply thereto with such incivility, in criticising the judge for having done wrong because of the lack of that power of attorney. For by such procedure [Abate Paolo] proves that he wished to trick also Monsignor the Governor into consenting to a thing beyond his power. And he rests convicted of this, because the said Abate Paolo was the manipulator of all they did, nor was a straw moved without his assistance. And he was well provided with abundant power of attorney by his brother, wherefrom he had the fullest authority to do as if he were the very person of his brother, with a proviso of after confirmation, the efficacy of which every one knows. And this is confessed even by the Anonymous Author, since he asserts that Guido at his departure left the entire conduct of his case to the Abate, his brother. But one may well see with what object he denies the said consent, that is, in order that he may more bitterly make pretence of the complicity of the Comparini in the pretended dishonesty of Francesca, who had been guarded by them as a daughter. This would seem very improbable if he should once admit the consent of the Abate.

No less rancorous is the assertion made by the Anonymous Writer that Lamparelli laid out the money to provide Pompilia

with food while she was in safekeeping. Nor was Lamparelli reimbursed by the deposit in the Office, which had come from the money found on her and on Caponsacchi, when they were arrested at Castelnuovo, which was supposed to have been stolen from the husband. But the 48 scudi, which the wife confessed to have taken away from him, were fully restored to the said Abate Paolo, as is proved by his receipt, made during the trial. The rest of the money was conclusively proved to belong to Caponsacchi. And as soon as Abate Paolo received the money, for which he continually clamoured, he left Rome to take part in the planning of that notorious murder, which followed a little while later.

But there had previously been given notice, at the instance of Francesca Pompilia before Monsignor the Vice-Governor, of a suit for divorce and for the recovery of the dowry, which had been spent. This was very bitter to the Franceschini, because in that lawsuit conclusive proof would be made of their subterfuges, their cruelties, their threats of poisonous drugs that had been prepared; of which the Canon Conti, who was the mediator in that flight, had not been ignorant. And it is public talk and report throughout Arezzo that he died about a month ago under similar suspicious circumstances. Hereby ceased all hope, which the Franceschini had had from the beginning, of gaining the entire property of the Comparini. And from this, every sane mind may see and know what is the true root of such rash and pitiable murders; whether it is injured honour, or scandalous and detestable greed and cupidity. From this arose the hatred in the lawsuits brought and still undecided, which drew even greater dishonour upon the said Franceschini, and when decided would be for their ruin.

In vain therefore this Anonymous Writer and his other defenders wear themselves out in exaggerating the plea of injured honour. For then that which had no true existence would have been taken from Guido by his wife. This was fully proved in the arguments made for the Fisc, in answering those letters, from which Guido drew his strongest proof. On the contrary, Franceschini has by his own deed renounced all right to repair his honour, since he did not avenge it at the time of overtaking her in the said inn of Castelnuovo. Nor does his excuse really help him—that he was unarmed, because he had with him indeed a sword, and possibly other concealed arms. For it is not probable that he would have been willing to go on following his wife accompanied by Caponsacchi, without being provided with

arms. And this all the more because the fugitives also were unarmed and were provided merely with a little dagger. But Guido preferred to choose the judicial road and had them arrested by the police, and he demanded that the charge against them be pushed through to their punishment, even imploring the rescript of the Supreme Pontiff. He also laid his entreaties again before the judges in the case (this very well discloses his purpose, which was the unconquerable motive of all his acts) and made special insistence before them for the payment of the price of the honour, which he pretended had been taken from him. And would he not even have had his wife declared an adulteress for the sake of gaining the dowry? If then he has, as one may say, demanded the price of his honour in the Courts, how can he be permitted to commit such awful murders for honour's sake?

For whenever a husband is permitted by reason of natural law, or even by the civil law, to kill his wife for honour's sake, this power and faculty ceases whenever the husband has renounced it by imploring, as above, the arm of the law. And these complaints that he made, and his recourse to the Pope, show the price he put upon his honour. And with these judicial proceedings he lost, without doubt, his right of private vengeance for his injured honour, which he might have carried out. And by this one tacit renunciation, this right is extinct. [Citation.] For the writer cannot claim that the judicial action brought by Franceschini would not effect the renunciation of private vengeance for his honour, but that he could still employ the one or the other, and avail himself of whichever might seem better to him. For this is contrary to the text [Citation] which is stated as follows by the celebrated Canonist, Giovanni Andrea: "A choice cannot gain both alternatives in seeking confirmation therefrom; even if the one is claimed to include that by which the man can attain the end of his intention. Therefore a man must choose one, and when it is chosen he cannot turn to the other." And still clearer are the following words of the same authority: "The right to return to a second alternative shall not at all be allowed, when one seems to have renounced to choose the first and to profess that his rights cannot arise therefrom."

But although this exception from every miscarried law might be judged permissible, every foundation of it would be destroyed by the utter lack of proof of an offence received in his honour; for there was no proof of it in the prosecution for flight. The Anonymous Writer strives to deduce that from the pretended

love-letters written to Caponsacchi, which were denied by Francesca and were not proved to be her handwriting, either by her own acknowledgment or by her signature. One cannot claim that she was convicted of it, nor that any legitimate proof of it resulted, as all judicial practice shows.

And even if without reason we were obliged to acknowledge that they were written by her, would it not be too bitter and too unreasonable an inference that from them arose the husband's motive for killing her because she had written them? No one of sound mind will be persuaded to pity the husband who has gone on to kill his wife for the sole reason that she had written love-letters. For conjugal honour is offended neither by note, nor by pen, but only by acts of impure dishonour; and of this, in our case, every shadow of proof is lacking.

This is all the more true because the mere suspicion of dishonour ceases with a thought of the true motive, for which the letters were written; namely, by pretended demonstration of affection to allure this Caponsacchi to rescue her from imminent peril of death. Nor from this could she find any other escape than by flight; for she was always terrorised by the anger and hatred conceived by her husband for feigned reasons. And therefore, as the love-letters arose from that occasion, they ought to be referred to it, and not to a dishonourable wish to smirch her conjugal faith to her husband. To the same cause, likewise, should certain conversations be referred, which she had had from the window with the said Caponsacchi in order to arrange the manner of saving her life, and not to give offence, nor to hazard her own modesty, nor the honour of her husband. Even the most chaste of women have used like artifices. We find in the Sacred Scriptures that Judith entrapped Holofernes in the same way, for the purpose of winning the liberty of her native land. And so it may be no less permissible for this poor woman, who was solely intent upon the security of her life, to allure Caponsacchi by amatory letters to be a safe companion for her in her flight, and this without any stigma of immodesty.

Much less can an offence of his honour be inferred from the flight; because, as I noted above, this flight resulted from the cause declared. And one may see clearly that it was not for doing any injury to her husband. For the fugitives did not turn aside into unknown places, but they journeyed precipitately along the consular road by post, without spending the night anywhere. And their journey was toward Rome, where the poor wife hoped that the Comparini, who had raised her as their

daughter, would continue toward her those acts of love with which they had brought her up, even till the said marriage was contracted with Franceschini.

And all that is being reported that a driver testifies he had seen them kissing along the road has no legal foundation. For it rests merely on the word of a single witness of the lowest class, and he swears to matters that are quite improbable, because he had to drive the carriage with such rapidity as that with which the fugitives were following their journey. Hence it was almost impossible for him to look backward, or to see what they were doing inside of that covered carriage. And this is all the more so because his deposition is vague, nor does it specify whether the kisses were given at night or by day. But his deposition is rendered much more doubtful and improbable because, in such a swift journey as the carriage was making, it might chance during the jolting of it that the accident of their faces meeting casually would arise, and to him this might seem the act of kissing. This happens very commonly, even when one is making no such journey, according to the quality of the road and the rough ways which one finds. This makes his testimony insufficient and doubtful enough or, even further, it is audacious and incredible.

Then as to the other point which the Anonymous Writer asserts too bitterly, namely, that when they arrived at Castelnuovo the innkeeper was ordered to make up only one bed for the repose of the fugitives, and that they slept together. The host however did not have the hardihood to swear, in his cross-examination, that they had slept together in it. This circumstance is excluded by the deposition of the wife as well as by that of Caponsacchi. Because their affidavits constantly affirm that neither of them went to bed for rest, but that merely the wife, who was worn out by the discomfort and suffering of so precipitate a journey, rested for a few hours seated in a chair; and that the bed was left arranged as the host had adjusted it; and it would have been found mussed, if they had slept in it. It is also proved that when Franceschini arrived at the said place he found Caponsacchi urging that the horses be harnessed for continuing the journey, and no proof is given to the contrary. Nor can one justly pity Franceschini for his injured honour, which had been kept intact by the fugitives.

Likewise the title, to which the same Writer appeals—that the decree of condemnation for Caponsacchi's banishment had been inflicted because of criminal knowledge, to the injury of

Guido's honour—has no real foundation; because this title was corrected as untrue, and not in accord with the proofs. Of this fact we may have as legitimate witnesses the very Governor himself, and all the judges and notaries of the tribunal who have any part in the criminal court. And if one will only give it due thought, the title of that case was placed there, just as a wine bush hangs outside the door of an inn, which very well shows that they sell wine there, but does not prove whether what they sell is good, and saleable, and agreeable. Oh! by no means. For one may find the wine there to be sharp, and muddy, and of other inferior qualities. If therefore we read the documents and the proofs registered during the prosecution, by which the crime is proved, and not by the erroneous title, which cannot offer a shadow of proof for the pretended criminal commerce, there is even less suspicion of immodesty. And one can well understand that all proof was lacking during the prosecution from the mildness of the penalty inflicted, which does not at all correspond with the gravity of the crime charged. One can also see the impropriety of condemning Caponsacchi as an adulterer while the cause against the wife was still pending; because she could not be condemned while undefended.

But to remove every suspicion of this pretended adultery, I beg any dispassionate reader to reflect that the adultery could not have been committed in Arezzo, because to the guardianship of her husband was added that of the brothers, of their common mother, of the servant, of the relatives, and of the neighbours; yea, the voluntary imprisonment of the unfortunate child, who was always shut in a small room to guard her honour. Much less could adultery have been committed during the journey, as has been proved to be utterly unlikely, improbable, unproved, and far from the truth. Nor could it have been committed at Rome; for it is well known that Pompilia was taken from Castelnuovo to prison, and from there was removed to the Nunnery of the Scalette, and then because of her pregnancy was consigned to the said Comparini, under the form of keeping their house as a prison with security of 300 scudi. Caponsacchi also was staying then at his place of banishment in Civita Vecchia. In this fact all suspicion ceases, since the consent of Abate Franceschini, who is so zealous for his brother's honour, as well as his own, concurred therein.

Nor can one restrain himself without strong exertion when he hears such exaggeration from the Anonymous Writer as that Caponsacchi left his prison to go in banishment to Civita

Vecchia at a time when the wife was staying in the house of the said couple, as a prison, and that he lodged in their house. But he cannot speak a more barefaced lie than that, because Caponsacchi has never been their guest, and as soon as he left the prison he went to the place of his exile; and he has faithfully observed his banishment without ever returning to Rome. Nor did the wife leave the nunnery before it was proved to Monsignor the Governor that Caponsacchi was staying in Civita Vecchia, as was established by the authentic testimony of the Chancellor of that district.

The said Writer, however, gives me even more room to blame his excessive boldness in stigmatising the honour of Franceschini as sullied by his wife, by saying that as soon as Guido had ascended the stairs in company with his fellows, armed to commit this execrable murder, he looked about upon those walls, which were all full of his insults, as if the said silent stones had known how to make contrivances of foolish thoughts to foment his inhumanity for so horrible a murder. Because for this he can give no other proof than that he was writing fancifully without any foundation. For Guido was indeed willingly dishonoured; because to his other dishonours he added these disgraces also, even by his own wrongdoing. For it is made very clear above that the cause for which he committed the crime was not to repair his honour, which had been injured by his wife. But it was his unmasked tricks, the hoped-for lucre, which had vanished, and the lawsuits still pending.

And why can he not bring some other no less convincing proof, if honour urged Franceschini thereto? And was not that honour sufficiently avenged by the death of his wife? Why imbrue himself straightway with the blood of Violante and Pietro, who were not accomplices in the pretended dishonour? And why should he lay such plots through many days to procure the death of that kindly benefactor, because the latter had been moved by pity and had ministered to their aid in the said law-suits? Upon that one there has never fallen a suspicion prejudicial to Guido's honour. For while the wife was in Arezzo he was staying at Rome. And when she was first married she was not fully thirteen years old, and after her flight, when she had returned to Rome, we know that she continued under guard in prison, or in the nunnery, and then in the home of her parents and at this time she was very near her confinement. Hence one can conclude truly that the motive of this murder was other than that of honour, and that it was his greed, as was said, and

the lawsuits, as Franceschini himself confesses in his cross-examination.

Nor ought the declaration made by the said wife in the face of death be despised, since in the presence of many priests and persons who are quite trustworthy, even while she was constantly suffering from such severe wounds, she maintained and professed with greatest frankness that she had always lived chaste and faithful to her husband. And with a heart in fullest resignation to the Divine Mercy, she prayed pardon for every mistake she had committed to the disgrace of her husband. Nor in such a matter is it to be presumed that the one dying lies, at the risk of the eternal safety of her soul. A person should also reflect that in this deed there occurs a special favour from the hand of the very Omnipotent, who caused the wife to survive for a few days, in order that she might make clear her own innocence and throw light upon the murderers; for without this the crimes would have gone unpunished. For during the same crime Franceschini had repeatedly commanded his companions to see if she were quite dead. And when they had taken her by the tresses and had lifted her from the ground where she lay, they believed she was dead; because the poor wife, by natural instinct, knew how to feign it by her relaxation, as the delinquents confessed. And this mark of divine favour all the more verifies the declaration of the wife, which has been proved by the confession of those guilty of the crime.

I have left it for the last to discuss and refute what the said Writer pretends concerning Abate Paolo. But if he had to speak the truth, he might reasonably affirm that the Abate had been the whole foundation of this scandal. For he had urged Guido on to the murders, and he had woven the whole plot, inasmuch as it was he who, from the beginning, wished to attain, by dint of industry and trickiness, the marriage of the said Francesca Pompilia. It was he who had sustained the suits, both civil and criminal, and he who, under the name of a grandee, and by boasting of their word of honour, had tried to extort a judgment by means of fine insinuations, by subterfuge, and by trickery; which was not right. It was he, who was very sensible of having been proved to be the man of guile, who had been deluded by his own trick. Therefore this Writer had good reason to say that the faces of others served the Abate as mirrors by which to read his own evil courses, and not the lost honour of his brother.

I forbear to respond to what the Anonymous Writer has tried

to have believed to the praise of Abate Paolo Franceschini, to excite greatly our pity; since the intention of the author of the present response is no other than to make clear the falsity of the suppositions against the honour of the poor wife and against the Comparini, and to serve the cause of justice. And he leaves the judgment of it to those who have full knowledge of it. From the same consideration I pass over responding to many another impropriety, which has been advanced uselessly and without any point by the said Writer.

And I close my response with the example of Samson, alleged by him. When he saw himself exposed to the public scoffs of the people, he gave a shove to the pillars of the palace, causing it to fall that he might die with the rest under its ruins, and might cease to be longer the scorn of that people. So lest the said Franceschini may be ridiculed for his tricks, it is fitting that he and his companions pay the penalty merited by their crime. For these are pernicious to the State and to that peace and security which litigants in the Courts of Rome ought to enjoy if we would maintain what the vigilance of the Supreme Pontiff Alexander VII., and his successors, has provided. For they have published a Constitution as to that, and with it Banns successively promulgated. The sacred order of such laws should be observed all the more willingly, inasmuch as Guido had chosen the judicial way to vengeance, and the appeals made to the Supreme Pontiff, who is most eager to do what is just, were sent back to his judges. Nor could Guido grieve for this without some pretended injury, as is evident; hence the Anonymous Writer wished to ascribe it to the aggravation by which the anger of Franceschini had been exasperated. This clearly shows with what intent he had broken into such detestable excesses.

[File-title of Pamphlet 16.]

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*By the Most Illustrious and Most Reverend Lord Governor of the City in Criminal Cases :*

# *ROMAN MURDER-CASE.*

*For Count Guido Franceschini and his Associates, Prisoners, against the Fisc.*

*Reply as to law, by the Honourable Advocate of the Poor.*

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*At Rome, in the type of the Reverend Apostolic Chamber,*
1698.

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# ROMANA HOMICIDIORUM

[Pamphlet 16.]

Most Illustrious and Most Reverend Lord:

I omit further discussion with my Lord Advocate of the Fisc about the communication of his allegations, because the time is brief, and I have professed great reverence for him since my youth. Let me also pass over the claim that when one is arguing about death inflicted by a husband upon his wife, not in the act of taking her in adultery, but after an interval, mere suspicion, however strong, is not sufficient to redeem him from the ordinary penalty of the Cornelian law, but that the clearest proof of the adultery is required, as is claimed by our opponents. Yet we have proved the contrary in our former argument, § *quamquam ad hoc.* And Dondeus, Sanfelicius, and Muta, who were not cited there, hold that it is quite enough if the couple be found alone in some retreat; and No. 3 says especially if the wife be beautiful. [Citation.] See the word of Ovid: "Great is the strife of modesty with beauty, And man keeps eagerly craving it." [*Heroides,* Paris to Helen.] So in the present case, according to the same author: "By this young and passionate man is she supposed to have been returned still a virgin?" [*Heroides,* 5, 109.]

At present, we are dealing with a case not merely of clearest proof, but also of notorious fact; because we have a decree of this very Tribunal by which such adultery was declared. Although the words of this decree have been given in the present information, § *Absque eo quod,* yet I wish to repeat them here, because they are so clear: "Giuseppe Maria Caponsacchi, of Arezzo, for complicity in the flight of Francesca Comparini, and for criminal knowledge of the same, is banished for three years to Civita Vecchia."

But I cannot pass over what is still claimed—that this decree was revoked—because, as I have said in my information, the truth is quite the contrary; for we have only the fact that in the mandate for imprisoning the sinning Canon the repetition of the whole decree, as given above, was omitted, and it was said:

" For the cause, concerning which in the suit." These words are so far from showing a revocation that they rather offer confirmation of the said decree, as we have affirmed in our information, § *Nec verum est.* The same should be said of the like words furnished by the notary in the bond which Francesca Pompilia executed to keep the home of her father as a prison. This was when she was brought there from the nunnery, where she had been staying securely, on the grounds of her supposed infirmity, but I may say more truly that it was because of her pregnancy, which she wished to hide by some evil deed.

[Our claim is all the more true] because this pretended revocation of the decree could not be made when the other side had not been heard, as I have said in my information, § *Eoque magis.*

Likewise I cannot pass over what is said as to the Canon having been condemned only to the penalty of banishment because of defect of proof of adultery. For if such proof had not existed, how could my Lords Judges express in the decree that they condemned him for criminal knowledge of the same Francesca Pompilia? It is the truth that the judges held that the said adultery was most conclusively proved, and that the said Canon was convicted of the same, since in the prosecution nothing is wanting but the taking of them in the foul act; and this is not necessary to prove adultery. [Citations.]

The penalty to which the said Canon was condemned did not indeed correspond with the said crime. As to this many replies may be made, but, because this has no connection with Count Guido let it also pass by. For however that may be, who can deny that Count Guido, on reading the said decree, which needed no comment, ought justly to be angered for the conjugal faith violated toward himself? And who can deny that he ought to be somewhat excused, if afterwards he took vengeance for such a violation? [Citations.]

And this is true, although he took such vengeance after an interval, as was plainly demonstrated in my said past information, § *Nec verum est.* For there are few authorities who hold the contrary, and therefore it would be almost heretical to doubt the truth of such an opinion. [Citation.] Especially since this has been accepted in almost all the tribunals in the world, particularly in that of the Sacred Council, which establishes the precedent for all the other tribunals of the City and of the entire Ecclesiastical State. Hence Concioli affirms that it is almost like sacrilege to depart from this opinion. [Citation.]

And is it not a fine pretence to wish to exclude the plainest proofs of adultery by the word of the very wife convicted of it, and then retained in the nunnery by reason of it, as my honourable Lord Procurator General of the Fisc has ingenuously acknowledged? For a person is not obliged to disclose his own baseness in the face of death, as we have proved in the said present information, § *Et quatenus*, and the § following. And since she had lived badly, not to say in utter baseness, to the injury of the honour and reputation of her husband, we inflict no injury on her by wishing to presume that even in death she did not come to her right mind, according to the saying: "He who lives badly dies badly." And no one, even in death, is presumed to be a Saint John the Baptist, as in my information, § *Nec valet dici*.

As therefore it remains firmly established that Count Guido had just cause for killing, or causing to be killed, Francesca Pompilia, his wife, the same must be said as to the murder of Pietro and Violante, the father-in-law and mother-in-law. For in the prosecution of the said Francesca Pompilia for flight from her husband, proof also came to light that they had conspired in that same crime, and consequently were among the causes of the injured honour and reputation of Count Guido. And this injury to his honour had also resulted from what they had pretended and had exposed before every one—that his wife was not their daughter, nor legitimately born, but was the daughter of a harlot. And afterward they had received her into their home when she had been declared an adulteress. For either she was their daughter, and they ought not to deny it in Court, or else she was not their daughter, and they should not receive her into their home after she had been convicted of adultery. For in doing so they had, by that very act, declared that they had been and wished to be her panderers. [Citations.]

The confession of Count Guido cannot be divided from its qualification, that he had demanded the murders for honour's sake. But it ought to be accepted by the Fisc along with the said qualification, as we have proved in our information, § *Huiusmodi enim confessio*. The authorities alleged to the contrary by my Lord Advocate of the Fisc hold good in a qualification, extraneous to the confession itself and which is not therefore proved otherwise, and when there is argument for some extraordinary penalty, and we have admitted this in our information, § *Præsertim*.

But just as the plea of injured honour relieves Count Guido from the ordinary penalty for murder, so should he be excused

from certain other ordinary penalties, laid in the Banns and Apostolic Constitutions against those bearing prohibited arms or committing other crimes. For I have said, and I repeat, that the just anger which excuses him from the one crime should also excuse him from the others, since this reason is everywhere and always in his favour, that he was not of sound mind, according to what was affirmed in our information from § *Agnoscit Fiscus*, down to § *quo vero ad litem.*

And just as this cause is enough to gain for Count Guido a diminution of the penalty, so should it be considered to be sufficient likewise to gain that favour for his fellows, who as auxiliaries cannot be punished with a greater penalty than the principal himself, according to almost innumerable authorities, and they of great name, who were alleged in my past argument, § *quæ dicta sunt*, with the following, and in my present argument, § *Verum et Sociis*. To this, no response has been given by the other side.

This is all the easier as regards Blasio Agostinelli, who has not at all confessed that he killed or wounded any one, but only that he was present, as we have formerly considered the matter in our information, § *Quoad Blasium.*

And as to Domenico and Francesco, beside what has been deduced in favour of the others, they are foreigners, and are therefore not bound by the Banns of the Governor (for by these, men who live outside of the District are not bound) nor by the Apostolic Constitutions prohibiting the bearing of arms, as we have said in our past argument, § *Quae eo facilius.*

This is all the more so since Domenico still asserts that he is a minor, and for this purpose he was so described in the prosecution (page 304). And as regards Francesco, beside the abovesaid description in the same prosecution (page 35), we have the baptismal register, which conclusively proves his age. [Citations.] For he was born the 14th day of February, 1674, from which it is evident that at the time of the commission of the crime, which is to be had in regard for punishment [Citations], he had not completed the twenty-fourth year of his age. And to one less than twenty-five years old the penalty should be diminished, etc. [Citations.]

And this indeed is of necessity, and not at the discretion of the judge, because such diminution of penalty arises by advantage of law that has been passed and from intrinsic reason, diminishing the penalty. [Citations.]

Although there are not lacking some authorities who think

the contrary, namely that it all depends upon the discretion of the judge, yet our opinion is the truer and the more generally accepted in criminal causes which are not very atrocious. [Citations.] And when the crime is merely savage, or more savage, the judge is obliged by the very necessity of his duty to diminish the penalty, according to those authorities recently alleged. [Citations.]

This opinion also has a place in the crime of murder, notwithstanding the order of the text. [Citations.] "If any one should make you a defendant under the Cornelian Law, it is suitable that your innocence shall defend and purge itself by your minority." For the order of this text should be interpreted thus, namely, that a delinquent who is a minor is not to be excused entirely, but is only to be punished more mildly, according to the old authorities who are cited with abundant hand by Farinacci. [Citations.]

This is especially so when, as in the present case, the delinquent minor does not sin alone, but in company with others; for then he is presumed to be seduced by them, and therefore the ordinary penalty comes to be diminished the more readily for him. [Citations.]

We do not know whither the Fisc pretends to turn for the destruction of these foundations in law, because my Honourable Lords, the counsellors of the Fisc, have claimed nothing as to this matter, either in their past argument or the present one. For when they claim to escape our exception by the Florentine Statute [Citation], that a minor of sixteen years is punished criminally, other responses are at hand:

First, that the provision of this statute does not extend to crimes committed outside of the territory of the said State, but that the place of the crime and its statutes should be attended. Then these indeed cease, as they do in the present case, because the Banns of the Governor have no place when there is argument for the punishment of a foreigner. This fact arises from defect of power in the Prince or official establishing them, according to what was alleged in the past argument, § *Quae eo facilius*, and the one following. For then the criminal should be punished according to common law. [Citations.]

The second response is that the statute says nothing else than that a minor of sixteen years cannot be punished with the ordinary penalty of the crime. Consequently it ought to hold good in our case, since we are indeed arguing about a minor exceeding sixteen years, but of one less than twenty-five years

old. Such a rule should be drawn from Common Law, in view of which the said statute in such a case receives a passive interpretation. [Citations.] Caballus testifies that he saw it so practised in diminishing the penalty to one less than twenty-five years, that is to one who was eighteen years old. [Citations.]

Finally the third response, and the one that lays the axe to the root of the tree, is that the Accused is not of the city of Florence, nor of its territory, but of the territory of Arezzo. But the city of Arezzo and its dependencies are not bound by the statutes of Florence; first because they are not called subjects, but vassals, of the said city of Florence; and, second, because the city of Arezzo has its own statutes. [Citations.] For reference is had to the ruling state, when other subject states have not their own statutes; but it is otherwise, if they have them. [Citations.]

And so they are contrary, or incompatible. [Citations.]

Soccinius [Citation] bears witness of what manner these statutes of Arezzo are, as compared with those of the city of Florence, etc., and this is plain from the Rubric, etc., where it is commanded that those under twenty-five years cannot be rendered liable, without certain ceremonies, as Paolo di Castro counsels. [Citation.] For from this statute it is sufficiently evident that in the said city and its environs a less age is the rule according to common law.

So far as the Fisc may have foundations, which in our feeble judgment we have been unable to guess, I pray that these be kindly communicated to me, lest the poor accused minor may remain undefended.

Finally, as regards Count Guido, I pray that notice be taken of the unfortunate condition of himself and of his noble family. For all of his family and connection have had enough to lament even to the last breath of their lives, when they look upon the ignominy brought upon them by this woman and her parents. And because of this, there has been doubt up to the very present moment whether one nearly related would go mad. And the excellent piety of our most clement Prince and Most Illustrious Lord has declared this, to whom the Accused himself with his whole heart commends himself in the arguments made in his defence, not to speak of what they may learn about it from the Anonymous Author [Pamphlet 10]. [Citation.]

DESIDERIO SPRETI, *Advocate of the Poor.*

# LETTER

WRITTEN BY THE HONOURABLE SIGNOR GIACINTO ARCANGELI, PROCURATOR OF THE POOR, TO MONSIGNORE FRANCESCO CENCINI, IN FLORENCE, IN WHICH HE TELLS HIM THAT THE SENTENCE OF DEATH HAD BEEN EXECUTED IN ROME AGAINST THE GUILTY ON FEBRUARY 22, 1698—THAT IS, THAT FRANCESCHINI HAD BEEN BEHEADED, AND THE OTHER FOUR HANGED.

## [LETTER I.]

To THE illustrious Signor, my most worshipful Signor and Patron:

Too late have arrived those proofs, which were sent to me by your Honour, on behalf of Signor Guido Franceschini of blessed memory. For when the Congregation of Monsignor the Governor had determined, in spite of the reasons given in his favour, that Signor Guido was guilty under the death penalty, I obtained, with much trouble to myself, some delay for proving his clergyship alleged by me. To this end a messenger was dispatched to Arezzo. But since the Sanctity of Our Lord [the Pope] did not deem it wise to postpone the execution of the sentence already decreed, he has seen best by special writ to make denial of any clerical privilege, which might have been claimed [in Guido's favour], and also as regards the minority of Francesco di Pasquini, one of the accomplices. Hence sentence against all five has been executed to-day, with distinction only in the manner of their death, as Guido's life was ended by decapitation. This consolation survives for his relatives and friends, that he has been pitied by all men of honour and by all good men. Confessing my own shortcomings, I cannot deny feeling infinite regret, as I attribute the whole outcome to my inability in offering the valid grounds. May God reward his house and all his friends with abundant blessedness for this

tragic accident. Desiring your further commands, I reaffirm myself, as ever,

Your Excellency's most obedient servant,

GIACINTO ARCANGELI.

ROME, *February* 22, 1698.

To the illustrious Signor, my most worshipful Signor and Patron, Signor Advocate Francesco Cencini, Florence.

# LETTERS

## Written by Signor GASPERO DEL TORTO and Signor CARLO ANTONIO UGOLINUCCI to the aforesaid Monsignore FRANCESCO CENCINI.

### [Letter II.]

The proofs you send did not arrive in time, because to-day finally, after so many disputes, the execution of poor Signor Guido has taken place, he having been beheaded, while the four cut-throats have been hanged. The case was decided Tuesday, but because it was a churchman who had sinned, and because it was claimed that the death-sentence was not in keeping therewith, a messenger was dispatched to Arezzo later on to get proofs of it. But the Pope yesterday set his hand thereto, and has decided the case, so that to-day it has so followed completely. Now that the will of God has been fulfilled that he should suffer such a punishment, it has at least been brought about, in view of the arguments made in his defence, that he died the death of a gallant man. For aside from the fact that he has died with exemplary courage, he has also been pitied by all gallant men, and his house has lost nothing in the matter of reputation. All Rome was there, as you may well believe. And [the mistake] cannot be made good with such speed as this may be written, because there have not been lacking admonitions of greatest consequence, since the Ambassador of the Emperor spoke of that point on Tuesday, as he himself told me day before yesterday; and than the matter was settled precipitately.

I have finished the argument before the Congregation of the Council, and at any time that Monsignor Secretary wishes to take it, I think we shall be ready. I pray you favour me with those copies of the proof as soon as possible. And if Canon Philippo does not give us the opportunity, he should be good enough to acknowledge it to me that I may think of other measures, wishing once for all to get out of this imbroglio if it shall be possible. And finally, I remain with all reverence, my

most illustrious and most excellent Signor, Your humble and obedient Servant,

GASPERO DEL TORTO.

ROME, *February* 22, 1698.

To the most illustrious and most excellent Signor, my dear Signor, Signor Francesco Cencini, Florence.

[Letter III.]

MY most illustrious and excellent Signor, my most worshipful Patron:

Tuesday this most unfortunate case was brought up and the Congregation of the Governor decided—Delay and according to instructions. The instructions were that they would await the proofs of the well-known clericate. At this favourable decision the defence took heart and Guido's good friends began to breathe again. Then last evening at eight o'clock Monsignor signed of his own accord the warrant, in denial of the clergyship which might be alleged and of the minority of one of the accomplices. No sooner had he signed the warrant than the news of it sped throughout the City, and with it the assurance of the sentence, which has been executed to-day since dinner against the five; that is, the loss of his head in the case of Signor Guido, and the gallows for the other four accomplices. I will not tell your Excellency my own grief, because you yourself will be able to be a true witness of it. These proofs would have been of the greatest relevancy, but not in this case, because Monsignor wished it so.

I enclose the Fisc's argument, except a single response, which I will send to you as soon as I can lay hands on it, that your Excellency may have the entire case.

Now that Signor Advocate del Corto has abandoned his own interests I may serve your Excellency in the matrimonial cases and in the other of Gomez. Therefore I set myself to all that in order that I may serve your Excellency, praying evermore your continual commands, that I may ever be your Excellency's obedient servant,

CARLO ANTONIO UGOLINUCCI.

ROME, *February* 22, 1698.

[File-title of Pamphlet 17.]

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*By the Most Illustrious and Most Reverend Lord Governor in Criminal Cases, or by the Most Excellent Lord Venturini.*

# *ROMAN LAWSUIT.*

*For the Heir-beneficiary of the former Francesca Pompilia, formerly wife of the former Guido Franceschini, against the Fisc and Associates in the Lawsuit.*

*Memorial of Fact by the Honourable Procurator of the Poor.*

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*At Rome, in the type of the Reverend Apostolic Chamber,*
1698.

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# ROMANA

## [Pamphlet 17.]

Most Illustrious and most Reverend Lord:

In the contention most sharply and most learnedly carried on between the Defenders of the Poor and the Fisc in the case of the murders committed by persons led by Count Guido Franceschini against the person of Francesca Pompilia his wife, and Pietro and Violante Comparini, I refuse to descend into the arena, lest I may seem to fail in the office which I discharge in common with the said Defenders. My silent pity has delayed and let time slip by; because I believed it would be to the prejudice of Guido and his fellows imprisoned for that offence (in whose excuse the plea of injured honour is especially strong) if I should wish to push the defence (which was committed to me long ago) of the shame and honour of the same Francesca Pompilia; for her tender mind has been stained by no infamy arising from impure lust, and against her the suspicious husband could have made no objection, unless wife-murder had followed, as if from this he wished to prove the adultery merely because he could then kill his wife, and he killed her that she might be believed to be an adulteress.

But now since the case has been most sadly terminated as regards all of those imprisoned (for thus these things terminated which should not have been begun) I begin anew the dispute over that most unfortunate question, and assert most safely (both for the reasons fully given in my argument for exclusion of the asserted rape, which is reassumed gratuitously, and for those more fully gathered by his Honour, My Lord Advocate of the Fisc, in his very learned allegations distributed in both presentations of the case), first that the memory of the aforesaid Francesca Pompilia should be utterly absolved from the crime of adultery, which was unjustly and all too bitterly charged upon her by her husband, and second that declaration should be made by a definitive sentence that she has never violated her marriage vow. And this is in spite of the fact that such insistence may seem incongruous. For although all crimes cease

with the death of the criminal [Citations], nevertheless when a crime is atrocious, and of such a nature that it involves in itself a brand of infamy, its memory ever endures. And therefore it is worth while for the principal to vindicate the fame of the authoress from the asserted crime of adultery, etc. Pellegrini speaks as follows: "The thirteenth case is when the heirs of one dead, for the purpose of purging him from the infamy which works against him publicly on account of crime, wish that [the court] take knowledge of the crime itself, for the purpose of establishing his innocence, for this is conceded by law." And Bossius asserts: "Note that even if death does utterly remove any further penalty, yet the heirs of one who is dead may make a stand for his fame and honour, in order that a declaration may be made about that crime." And Caballus: "For although with the death of the delinquent, a crime may be said to be extinct so far as his own person is concerned, yet the heirs of the accused, in their own interest and to wipe out the infamy of the one who is dead, may petition that the court go on to give an opinion, and that it be declared that the dead one had not committed crime." And he affirms the same under the following number.

And indeed this is not without manifest reason. For just as the Fisc may go further in the investigation of a crime that had been perpetrated during the lifetime of the one now dead, even for the purpose of damning his memory [Citations], likewise it cannot be denied by the principal himself, as the beneficiary heir and successor of the same Pompilia and Pietro Comparini, that inasmuch as her innocence is evident he may insist upon carrying away a sentence of absolution; for in other cases any one at all may have a chance to defend one who is dead. [Citations.]

And to delay such a judgment it is not right that the flight again be alleged, which the said Pompilia made in the company of Canon Caponsacchi, with whom she was arrested at the inn of Castelnuovo. For to remove that charge it is quite enough for one to allege the judgment of this Most Illustrious Congregation, given under the date of February 18, last past, against Guido Franceschini, because of which he was publicly put to death on the twenty-second day following, notwithstanding the fact that, to avoid the penalty of wife-murder, he insisted solely upon the asserted adultery, which he claimed had resulted from the aforesaid flight from home. All suspicion whatsoever of her dishonesty ceases because of the defences then made and

because, in the very prosecution, there was apparent a very just reason, on account of which the wretched wife attempted to flee thus from the home of her husband. Nor was it for the purpose of satisfying lust with the asserted lover, but that she might go back to her own hearth, and there, with her parents, might live a safe and honest life. This cause is very plainly proved by the notorious quarrels which arose on account of the poverty of the domestic establishment immediately after her arrival at the City of Arezzo along with Pietro and Violante Comparini in execution of the agreement included in the marriage-contract. And on account of this poverty the Comparini were obliged, after a few months, to go back to the City, with no small bitterness on account of the deception which they had detected. This is evident from the letters of Abate Paolo Franceschini, which presuppose these complaints that resulted from the said deception, and especially from the letter written March 6, 1694: "I write again to you that I do not wish to imitate him in his manner of writing, not being of his mind to sow broadcast in my letters such words as would well merit response by deeds, and not by words. And these are so offensive that I have kept them for his reproof and mortification." And further on: "So that if you give trouble, which I will never believe, you yourself will not be exempt therefrom." It is also evident from the letters given in my past information, and especially in § *Videns igitur*, with the one following. And although this does not show the nature of the altercation, yet, since Abate Paolo has not shown the letters written to himself, the presumption presses upon him very strongly that the complaints were just and that the cause of their quarrels and altercations was well founded. [Citations.]

It is also true that a very bitter lawsuit was brought by Pietro Comparini for the nullification of the dowry contract and for the proof of the pretence of birth, which had been made by Violante, the mother, both to deceive her husband and to bar his creditors, who were pressing him hard at the time. And since the dowry included all the property and the entire patrimony of Comparini, which was of no small value when we consider the rank of the persons concerned, controversy had indeed been raised for a considerable amount by the father-in-law. And this, as experience teaches from time to time, is accustomed to bring forth implacable hatred and deadly enmity. [Citations.] It produced indeed such an effect for this unfortunate wife, so that the love of her husband, which had long been disturbed by the

preceding altercations, was finally quite extinct. And this was so to such an extent that she often found herself exposed to deadly peril because of the severity of her husband, who at times pursued her with abuse, and again even with a pistol. And it cannot be questioned that such perils are quite suited to strike fear even into any hardy man. [Citations.] Hence it can be much more affirmed of Francesca Pompilia, a girl of tender age, who was destitute of all aid, and away from her own home and her parents. [Citations.] And Mogolon [Citation] declares that the mere sight of arms, even if the one who has them does not use them nor unsheath them, is just cause for fear; and in § 7, *No.* 15, he considers the absence of relatives as a ground for fear. And D. Rainaldi [Citation] says that it is enough if one sees signs or acts of manifest desire, or such as are preparatory.

Therefore, since so many very relevant circumstances concur, on account of which Pompilia was moved to desert her husband's bed by flight, all suspicion whatsoever of dishonesty and of violated conjugal faith is utterly removed. For whenever we have two causes, one of which is lawful and permissible, while the other is iniquitous and abominable, the former is to be fully received, and thereby the charge of crime is quite excluded. [Citations.] [And this is true] in spite of the fact that this lawful cause may seem to be excluded [first] by the letter written by Francesca Pompilia to Abate Paolo. For in the letter, after she had thanked Abate Paolo because he had joined her in marriage with his brother, pretence is made that her parents gave her the depraved counsel to destroy the entire home and to go back to the City with her lover; [it also makes pretence] that since their departure she was enjoying a quiet and tranquil life. [Second] from the company of the Canon Giuseppe Caponsacchi, with whom she had fled; because of which he was banished to Civita Vecchia for three years.

For however it may be with the asserted letter, whether it is substantiated or not, and whether or not the qualification should be considered probable, which is added in her sworn testimony by the same Pompilia, namely that her husband had marked the characters and she had blackened them with ink by tracing them with a pen, because she herself did not know how to write; yet it is certain that if the letter be read attentively it will be absolutely impossible to assert that she had written it with a calm mind. For who can be found so unmindful of filial love and duty toward parents as to persuade himself that this tender girl could have laid upon her parents such detestable crimes?

Because at the time she was not more than fourteen years old, according to the certificate of baptism given in the Summary of the Fisc, in the second setting forth of the cause, No. 2. And she was away from her own home and still grieving for the very recent departure of her parents, and was badly treated in the home of her husband, as is clearly shown by the continual complaints and recourse made not merely to the most reverend Bishop, but also to the Lord-Commissioner of the city. Nor is it probable that she would have informed her brother-in-law, who was so very unsympathetic toward her, of these matters unless, as she has frankly confessed in her sworn examination, she was compelled thereto by her husband. Nor without very evident peril of death could she show any reluctance to him because of his excessive severity, which she had very often felt before. And as this improbability is well suited to strike horror into those who read it, so likewise it very well shows that the letter was not written voluntarily, but under compulsion. [Citations.] Caballus asserts that what no sane mind would approve is inadmissible. [Citation.] And indeed such excessive cunning in extorting the said letter from the wife plainly proves Guido's craft, and the fact that the letter was obtained by false pretence, in order that he might quiet the mind of the same Abate, his brother. For the latter had been harassed by continual complaints on account of ill treatment of the wife, and had not ceased to criticise Guido daily for them. [Citation.]

As to her association with Canon Caponsacchi, this likewise does not seem enough to establish the blot of dishonour. For the most wretched wife was utterly destitute of all earthly aid and had vainly entreated the authority of the most reverend Bishop, and of the Lord-Commissioner, to free her from deadly peril; and on account of her age and sex it was not suitable that she should flee alone or in the company of some low-born serving-woman, for in that way she would carelessly expose herself to graver peril, as might have happened to her if she had been overtaken while alone on the journey. For then it could be said of her: "She fell upon Scylla while trying to avoid Charybdis." Therefore we should not be surprised if she took the aforesaid Canon as a companion. For he had been proposed to her by both Canon Conti and Gregorio Guillichini, who were related to Pompilia's husband. And it is utterly incredible that they would have consented to such a flight if they had not known it was quite necessary to evade the peril of death, which they very well knew was threatening the luckless wife, and if they

had not had strong faith in the honesty and integrity of her companion. Therefore, as such a necessity was pressing so hard upon her, her prudent choice of the lesser evil eliminates any shadow whatsoever of her pretended dishonesty. [Citations.]

[This is especially true when we] consider the manner in which the flight was executed, by taking the most direct road to the City with the utmost possible speed. And it very well shows that the sole motive was to save her life, and not to debase herself by licentious delights. For if this latter had indeed been the principal cause, she would not have gone to Rome by the shortest road, where she might immediately be taken by her brother-in-law and her parents, but would have gone to some more distant regions, or else she would not have gone with such swiftness, but would have delayed out of the public highway, and in a place where her husband could not find her, and where she could fulfil to satiety her lust.

This utter improbability therefore very well shows the truth of the cause for flight adduced by the wife in her sworn testimony—namely that she had gone swiftly to the City in order that she might there place her life and honour in safety in the home of her parents. For just as the strongest sentence of blame may arise from mere probability, so likewise no less presumption of innocence should arise from this improbability. [Citations.]

And this is strongly urged by the frank protestation made in the very act of arrest at the inn of Castelnuovo to the husband himself by the Canon, who rebuked him concerning this flight: "I am a gallant man, and what I have done, I have done to free your wife from the peril of death." So testifies Jacopo, son of the former Simon, a witness for the Fisc, in the prosecution for flight (page 50). And an example was offered by me in my allegation as regards that flight, namely that of Scipio Africanus. For when the beautiful young wife of Aleucius, the chief of the Celtiberi, had been captured by Scipio's soldiers, he said in restoring her to her husband: "Your wife has been with me as she would be with her own parents. Her virtue has been preserved for you so that she can be given back to you again, a gift unviolated and worthy of me and you." Titus Livius bears witness to this in his *Histories*, book 26, and page 493 in my volume.

And although it may be very difficult for a beautiful woman to preserve the decorum of her honour while journeying in the company of a young lover, yet it is not utterly impossible, as the examples seem to show, which were related in my allegation,

§ *Quidqud dicat.* And to these I add that of Penelope, of whom Ovid sings in book 3 of his elegies [*Amores,* III., 4, 23]: "Although she lacked a guard, Penelope continued chaste among so many suitors."

And this is especially true since neither the journey nor the company of the Canon were voluntary, but were merely for the purpose of avoiding the peril of death. And since such necessity was present, the presumption drawn from Ovid's *Ars Amandi* is rendered still further inapplicable, namely that "From a passionate young man, can she be believed to have returned a virgin?" [*Heroides,* 5, 129.]

Nor do the letters which were found in the closet of the inn at Castelnuovo seem to stand in the way and hinder the sentence petitioned, and impose a blot of infamy upon Francesca Pompilia. It is claimed that these were written by her to the Canon on account of the very devoted love with which she was pursuing him. But the exceptions and responses made in the past informations hold good. The first is that they were not acknowledged by her, nor was the identity of the handwriting proved; and some uncertainty is still present, since it is not evident to whom they were directed; nor would it be improbable that they might have been framed by the husband. For he was present at the capture and search, and hoped, indeed, that therefrom might result more readily the fixing of the crime of adultery. And he insisted very strongly upon this, in order that he might gain the desired dowry and lucre. This mere possibility to the contrary is enough to avoid the proof, which it is claimed may be drawn from them. [Citations.]

The second response is that, even though such exceptions as the above might not hold good, yet no proof of violated conjugal faith and of dishonour can be drawn from these letters. For even though proof of adultery may result from love-letters, it is utterly excluded in our case when we see that they were directed to a licit end, namely toward soliciting the Canon that he might afford her aid in her flight and that she might avoid deadly peril. For then, just as the end is permissible, so should the means also be considered lawful and permissible, even though suspicion is not lacking; for these should be considered, not in themselves, but on account of their end. [Citations.] But indeed, unless from the love-letters themselves there result an implicit confession of fornication, proof of adultery cannot be drawn from them. [Citations.]

It should be specially noted that she had very strong con-

fidence in her own continence and in the integrity of the Canon. And she trusted him much, and hoped that he would conduct himself modestly during the journey, since it is evident from these same letters that she had found fault with him for his freedom once: "And I marvel, that you who have been so chaste, have composed and copied matters that are so dishonourable." And further on: "But I would not have you do in any case as you have done in these books. The first of them is honourable, but the other octaves are quite the contrary. I cannot believe that you, who have been of such honour, have become so bold." For such sincere objurgation and the very tenor of the letters in which no dishonesty is read, clearly show and declare the spirit of Pompilia, who wrote them. For just as words are to be understood according to the thought of the one proffering them, so likewise should letters be interpreted according to the intention of the one writing them. [Citations.]

Since therefore the honour and modesty of Pompilia is vindicated from the flight and the letters, of still lighter weight are the other proofs of pretended dishonour. These are deduced from the approach of the Canon to her home for the purpose of speaking to her; from the insidious manner in which the flight was prepared and put into execution, by means of an opiate administered to her husband and the servants; from their mutual kisses on the journey; and from their sleeping together at the inn of Castelnuovo. For beside the general response that no conclusive proof is offered for all these, such as would be necessary to establish Pompilia as guilty of adultery, there is a separate response for each of them.

The entry and egress at night time into the home of Francesca rests merely upon the deposition of a single witness, Maria Margherita Contenti, who is under two very relevant exceptions: namely those of singleness and of harlotry. Her word therefore can impose no blot of infamy. [Citations.] And since such approach would tend toward the single end of arranging for the flight and rescue of the unfortunate wife from the very imminent peril of death, it should not be presumed to be for an evil end. For when an express cause is plainly present, to which a matter may be referred, and this cause is entirely lawful, the matter should not be attributed to a cause that is illicit and criminal. [Citation.]

The insidious manner, also, whereby Francesca Pompilia put into execution the flight, by preparing an opiate for her husband and all the household (aside from the fact that it is not proved),

would afford proof of sagacity rather than of dishonour, even if it were proved. For the wife would have been very foolish if she had attempted flight without such a precaution.

Under the same lack of proof labours the asserted mutual kissing during the journey; for that proof is entirely too slight, which is pretended to result from the deposition of a single witness of the lowest class. Especially since his word is shown to be too much prejudiced; for he swears that, while he was driving the carriage swiftly at night time, he saw Francesca Pompilia and the Canon kissing each other. Nor does he give any reason, as that the moon was shining, or that some artificial light was present to dispel the darkness. Inasmuch as such a detail is necessary in a witness who is testifying about a deed at night time, its omission takes away all confidence in him. [Citations.] For there is to be added another very strong improbability, namely that, while he was driving the carriage with such velocity that it seemed to fly rather than to run, he could see their mutual kissing by looking backward. Still more is this improbability increased by the very word of this same witness, since he swears that he had driven Pompilia without knowing that it was she, until afterward returning to Arezzo, he had met Guido Franceschini, her husband, following her. Because if he had seen her kiss, he would have recognised her straightway, since he had often seen her before and she was well known to him. And therefore it should be absolutely declared that, either influenced by the tedium of his secret prison, he had been compelled to swear so, or, as is more probable, since on account of the very great speed of the carriage the bumping together of those seated therein might chance, he had believed that this chance jostling of their heads and faces was for the base purpose of kissing. Hence the proof arising from his deposition was justly held in contempt in the prosecution for flight. And it would have been considered if it had had any probability.

Finally the proof of dishonour drawn from the asserted sleeping together in the same tavern at Castelnuovo is far weaker, since it was constantly denied by both Pompilia and Caponsacchi in their testimony. And only a single witness, the houseman of the same tavern, swears to it; and this also not from certain knowledge, but presumptively, because they had asked him for a room with a single bed. Canon Caponsacchi frankly confesses why he had ordered that only a single bed should be prepared—namely that Francesca Pompilia, who was worn out because of ill-health and the discomfort of their precipitate

journey, might rest a little, while he himself kept guard. Such an act should not be assigned to an illicit cause, as Cravetta [Citation] advises in such circumstances. And in No. 15, he says that interpretation should always incline to the humaner side, even when the rigorous side may seem the more likely. And the same author continues thus in *Nos.* 20 *and* 21. For it would not suffice as a full proof of adultery that any one be found alone and naked with her alone and naked, and that a young man be found unclothed and with shoes off in a closed chamber with a woman. Much less can such proof arise from a very brief delay in the same chamber for the purpose of keeping watch.

Very slightly does it stand in the way that Francesca Pompilia, in her cross-examination, concealed this delay by asserting that she had arrived at the tavern at dawn. For she was very well aware of the credulousness of her husband, and possibly asserted this to avert further suspicion of violated honour, which certainly might have arisen if she had confessed that she had spent a longer time in the tavern. As even if she had not denied such a stay, the confession under circumstances that still argue for the preservation of her modesty would not have been to her prejudice, so likewise the lie can do no injury. [Citations.]

But all suspicion of pretended dishonour is quite eliminated by the assertion of the most unfortunate woman, which was made in the very face of death, after many severe wounds had been inflicted upon her by her husband. [For she declared that] she had never sinned against her marriage vow, as is very evident from the numerous depositions of religious men, who ministered to her in death. They assert that they heard her continually praying that she might be given no forgiveness by the Divine Clemency for such a sin. This assertion made in the very face of death, deserves all faith, since no one placed in that condition is presumed to be so unmindful of eternal safety as to be willing to lie. [Citations.]

Finally, no foundation for accusing the memory of Francesca Pompilia of dishonesty can be established upon the asserted decree of this most Illustrious Congregation, by whom Canon Caponsacchi was condemned to three years' banishment in Civita Vecchia, with a statement made of his running away and criminal knowledge of Francesca Pompilia. For, as the Fisc himself admits, there was demanded by me, though not *in extenso*, the modification of that title by the honourable Judges, with the approval of his Excellency the Governor. And there-

fore, in the order for imprisonment, these words were suppressed and others were put in their place: *Pro causa de qua in actis.*

All further difficulty is removed from the mere consideration that such a decree had been issued, while no defences had been made for Francesca Pompilia, and while she was still utterly without a hearing. For she had not the slightest knowledge of it, since she had not been notified. But in the decree for the assignment of the home as a prison, only a cause relative to the trial was expressed. Hence it could not injure her, since it was issued against a third party while she herself had not been cited. [Citations.] And in the circumstances that a sentence given against an adulterer can do no injury to the adulteress when she has not been cited is the text. [Citations.] "If he is condemned, the wife is not condemned thereby, but shall carry on her own case." [Citation.]

This is especially true since we are not now contending to free the husband from wife-murder, and to infer a just cause apart from belief in the dishonour of the wife resulting from the said decree, and which would excuse him from the penalty of the Cornelian law. In this case, the changing of the said decree might possibly serve for an escape. But we are contending about the damning of the memory of a woman now dead, and about rescuing her and her family from infamy. And in the latter case just as such a harsh decree could not injure her during her lifetime, so likewise it cannot do her injury after her death.

ANTONIO LAMPARELLI, *Procurator of Charity.*

[in old writing.]

And according to the letter of Carolo Antonio Ugolinucci, May 17, 1698, I understand that the Criminal Court after two votes, decided on absolution.

# INSTRUMENT OF FINAL JUDGMENT

[Pamphlet 18.]

Given for the restoration of the good name and reputation of Francesca Pompilia, now dead, formerly the wife of Guido Franceschini of Arezzo, now dead; for acquittal in favour of Domenico Tighetti, as an heir beneficiary of the same Francesca Pompilia, from all disquietude, all molestations, vexations, and perturbations, brought or threatened to be brought by the Venerable Monastery of Saint Mary Magdalene of the Convertites in the Corso; together with the citations lawfully executed in observation of the four terms to instruct themselves as to the appeal and its legal prosecution, in order that the same sentence might pass on, as it has passed on, to judgment, because no appeal has been interposed.

In the name of God, Amen.

September 9, 1698, under the sixth declaration in the eighth year of the Pontificate of the Most Sacred Father in Christ, etc., Innocent XII., Pope by Divine Providence. This is a copy, or transcript, of the citations made by my own act, and written below, and of the sentence rendered respectively of the following tenor, namely:

The Most Reverend and Most Illustrious Governor in criminal matters:

Let the undernamed principals on the other side be cited, etc., to appear in the Criminal Court to-morrow, which will be the nineteenth day of the current month, at the accustomed hour of convening court, lest it seem good that each and all the terms be repeated as ill founded, and that they therefore are to be held and observed as null and void in their force for any powers whatsoever, and lest the one so insisting be freed from censures, so far as, etc., it be concluded, or seem best to be concluded in the case, and that the final sentence be heard in due form according to the aforesaid insistence by Domenico Tighetti, heir-beneficiary of the former Francesca Pompilia, the wife of the former Guido Franceschini, as principal, or, etc.

Notary for the Poor.

The Most Illustrious Francesco de Gambi, Procurator General of the Fisc, and of the Reverend Apostolic Chamber.

The Honourable Giovanni Maria Serbucci, Procurator and Manager of the lawsuit brought by the former Guido Franceschini.

The Honourable Francesco Paracciani, Procurator of the Venerable Monastery Santa Maria Magdalena of the Convertites in the Corso.

Against the Procurator General of the Fisc, etc. He says that no sentence can be given, unless in favour of the Fisc, and so far as, etc., insists that he be granted delay for the purpose, and in the meantime they cannot go on to any expediting of the cause, except for reason given in full court, and by the vote of the Lords thereof, and by testimony of the opposition in prison, and without citing all who have interest, etc., this 18th day of August, 1698.

Francesco Gambi, *Procurator General of the Fisc.*

I have made the above citation against the Fisc personally this day, and against the others by copy, which was sent to their homes, this August 18, 1698.

Balatresius.
Aloysius Pichius, *Substitute for the Fiscal General.*

*August* 19, 1698.

When he had made statement of fact, Antonio Lamparelli, Procurator, presented his case and petitioned as above. Thereupon the Most Illustrious and Most Excellent Lord, Marcus Antonius Venturinus, J.V.D., who holds the judicial bench, for the Most Illustrious and Most Reverend Governor of our dear City in criminal cases, gave sentence, as in this schedule, which he has taken in his own hands, has seen, read, and subscribed, and given and consigned to me as a notary for publication of the following tenor, etc., in the presence of Antonio Bernardino Piceno and Antonio Toparino of Caprarola, witnesses, etc.

In favour of Domenico Tighetti, in the name, etc., against the Fisc and those consorting with him in the suit.

In the name of Christ, whom we have invoked, we who sit for this Tribunal, and who have only God before our eyes, give this as our definitive sentence, which we offer in these writings by the advice of those skilled in law, in the cause or causes which have been tried before ourselves in the first place, or in

the second, and which are now being considered, between Domenico Tighetti, as heir-beneficiary of the former Francesca Pompilia, wife of the former Guido Franceschini of Arezzo, on the one part; and the Fisc and Giovanni Maria Serbucci as Procurator and Manager of the lawsuit of the former Guido Franceschini, and Francesco Paracciani, Procurator of the Monastery of Santa Maria Magdalena of the Convertites in the Corso, for all their rights and parts in that interest, on the other part; concerning and upon the pretended adultery committed by the said former Francesca Pompilia with Canon Giuseppe Maria Caponsacchi, and as regards other matters in the conduct of the cause or causes of this kind, more fully deduced, etc. By authority of the decree for the remission of the case, which was made by the Most Illustrious and Most Reverend Auditor S.S., by the acts of Pascasius, concerning which in the conduct, etc., and for cause given in the Court, and by vote of the same, we say, pronounce, declare, and finally adjudge from what has been newly deduced, that *proof is not established as regards the pretended adultery*, and therefore the memory of the same Francesca Pompilia should be and is *entirely* restored to her pristine good name and reputation; and that the same Domenico Tighetti, in whose name the above was deduced, should be and is absolved and liberated from each and all disquietudes, molestations, vexations, and perturbations brought, or threatened to be brought, by occasion of these as on account of the statement of these we have restored, absolved, and freed him, as above. And for this restitution and absolution and freedom, we wish and command that it be held as law that the suit or suits, of whatever nature, which have been brought thereupon be abolished, as we abolish them. And we charge that perpetual silence be imposed upon the Fisc and his consorts in the suit. And we have thus spoken, pronounced, declared, and finally given sentence, not only, etc.

I, Marcus Antonius Venturinus, who hold the judicial bench have so pronounced.

Given on this 19th day of August, in the presence of Antonio Bernardino Piceno, and Antonio Toparino of Caprarola Witnesses, etc.

By the Most Illustrious Governor of the City in criminal cases or the Most Excellent Lord Venturini.

Let the undernamed be cited for learning the appeal, and it lawful prosecution for the first time, at the aforesaid instanc

of Domenico Tighetti, as principal heir-beneficiary of the aforesaid Francesca Pompilia, formerly wife of Guido Franceschini: CHARITAS.

The Honourable Giovanni Maria Serbucci, as Procurator and Manager of the legal proceedings of the said former Guido Franceschini, as principal on the other side.

The Honourable Francesco Paracciani, the Procurator of the Venerable Monastery and Convent of St. Mary Magdalene of the Convertites in the Corso for all, etc.

I have made the said citation at his home, August 31, 1698. MOLINELLUS.

*September* 1, 1698.

When we had made statement of fact, R. D. Alexander Cassar, Substitute Procurator of Charity, appeared, petitioned, and was granted, as above.

By the Most Illustrious Governor of the City in criminal causes, or by the Most Excellent Lord Venturini.

Let those named below be cited for learning of the appeal and its legitimate prosecution this second time, at the aforesaid instance of Domenico Tighetti, heir-beneficiary of the former Francesca Pompilia, formerly wife of the former Guido Franceschini, principal, or, etc. CHARITAS.

D. Giovanni Maria Serbucci, as Procurator and Manager of the lawsuit brought by the former Guido Franceschini, as the principal on the other side.

D. Francesco Paracciani, Procurator on the other side for the Venerable Monastery and Convent of St. Mary Magdalene of the Convertites in the Corso, for all, etc.

September 1, 1698, I have made this. MOLINELLUS.

By the Most Illustrious Governor in criminal causes, or by the Most Excellent Lord Venturini.

September 3. When he had made statement of fact, R. D. Alexander Cassar, Substitute Procurator of the Poor, appeared, petitioned, and was granted, as above.

Let those named below, be cited for learning of the appeal and its lawful prosecution, this third time, at the aforesaid instance of Domenico Tighetti, heir-beneficiary of the former Francesca Pompilia, wife of the former Guido Franceschini, as principal, or, etc. CHARITAS.

D. Giovanni Maria Serbucci, as Procurator and Manager of the lawsuit brought by the former Guido Franceschini, as principal on the other side.

D. Francesco Paracciani, Procurator of the other side for the Venerable Monastery and Convent of Santa Maria Magdalena of the Convertites in the Corso, for all, etc.

I made this September 3, 1698. MOLINELLUS.

SEPTEMBER 4, 1698.

When he had made statement of fact, R. D. Alexander Cassar, Substitute Procurator of the Poor, appeared, petitioned, and was granted as above.

By the Governor in criminal causes, or the Most Excellent Lord Venturini.

Let those named below be cited for learning of the appeal and its lawful prosecution, this fourth time, and of the final presentation, and the decree, etc., at the aforesaid instance of Domenico Tighetti, heir-beneficiary of the former Francesca Pompilia, formerly wife of the former Guido Franceschini, as principal, or, etc. CHARITAS.

D. Giovanni Maria Serbucci, as Procurator and Manager of the lawsuit brought by the former Guido Franceschini as principal on the other side.

D. Francesco Paracciani, as Procurator of the Venerable Monastery and Convent of Santa Maria Magdalena in the Corso, for all, etc.

I have done this, September 4, 1698 BALATRESIUS.

*September* 5, 1698.

When he had made statement of fact, R. D. Alexander Cassar, Substitute Procurator of the Poor, appeared, petitioned, and was granted, as above.

I, Domenico Barlocci, Notary of the Court of Criminal Causes of the Most Illustrious and Most Reverend Governor of the City, as Notary for the Poor, have found this copy correct by collating it, although it was extracted from the original documents by one who is trustworthy in my eyes, etc. In pledge of the above, I have subscribed and have published it, as I am required to do.

[The seal of the said Notary.]

# THE SECONDARY SOURCE

OF

# THE RING AND THE BOOK

## A CONTEMPORARY MANUSCRIPT PAMPHLET

" The following pages contain a MS. contemporaneous account of the execution of the principal actors in the tragedy which has been immortalised in the poem of the *Ring and the Book*.

" I am enabled by the kindness of my friend, Mr. Browning, to give it a place in these Miscellanies of the Philobiblion Society." JOHN SIMEON.

(I shall not attempt to say with what a feeling I correct proof-sheets received on the day subsequent to that which brought the intelligence of the death of this great-hearted and noble-minded man, characteristically good and gracious to the very last.) R. B., May 24, 1870.

The above words are the introduction by Sir John Simeon and the comment by the poet (Philobiblion Society Miscellanies, xii. 1868-9), on the reprint of the subsequent pamphlet in the original Italian.

It was found in London by one of Browning's acquaintances, who, knowing the poet's interest in the subject, sent it to him. Internal evidence indicates that it was probably written (but not published) some few years after the crime, and it is more popular in style than any part of *The Book*. The writer during the first half of his pamphlet follows closely the affidavit of Pompilia and the second anonymous pamphlet [No. 15] of *The Book*. He then adds much interesting information as to the murder and the pursuit, arrest, trial, and execution of the criminals. Browning uses almost every scrap of additional information it affords. He accepts its fact with the same fidelity he shows in using *The Book*, and uses it extensively and without discounting its value as compared with the official record. It is therefore treated as an essential portion of the present source-study. Its new matter will be indicated by italics in the following translation.

Mrs. Orr has published somewhat less than half of the pamphlet in her *Handbook* in translation, which has been reprinted in the Camberwell Browning, and in the *Browning Guide Book* by G. W. Cook. The present version is made directly from the Italian text of the Philobiblion Society reprint.

# THE DEATH OF THE WIFE-MURDERER GUIDO FRANCESCHINI, BY BEHEADING

Guido Franceschini, a nobleman of Arezzo, in Tuscany, had stayed for some time here in Rome in the service of a person of some eminence. He decided to take a wife with dowry enough to be of advantage to his own house. When he had revealed this desire to a certain hairdresser *near the Piazza Colonna*, she proposed to him the Signora Francesca Pompilia, thirteen years of age, the daughter of a certain Pietro Comparini and Violante Peruzzi. For beside the promised dowry, she was heir to the reversionary interest in bonds and other properties worth about 12,000 scudi. When he had heard of this advantageous dowry, which seemed to him to be quite to his point, he lost no time in revealing it to his brother Abate Paolo, who had dwelt here in Rome for many years in the service of a Cardinal. He went along with Guido to the mother of the young woman, as they flattered themselves that they would succeed better in this way than by demanding her of the father, who was somewhat hard to approach. When they had made it appear that their income was of considerable amount, they succeeded in their intent; although it was then found out that their entire capital did not amount to the total of their income as given in that note.

It was easy for Franceschini to win over this woman, as *she was driven by the ambition of establishing her daughter in the home of persons of good birth.* She gave her own consent, and so worked upon her husband as to induce him to sign the marriage bond. Then when Comparini had been informed by a person who knew the resources of Franceschini, that they were quite different from what they had been represented to him, he changed his mind, nor did he wish under any consideration to carry out the marriage. *He gave as a pretext the very tender age of his daughter,* along with other reasons. The mother of Francesca, however, not seeing any chance to give her daughter to Franceschini, had her secretly *married during December, 1693, in San Lorenzo in Lucina.*

When this marriage reached the ears of Comparini, he was much angered at Violante. But she had such a gift of gab that Comparini not only agreed to it, but beside the dowry of 2,600 scudi, *on which he had already paid 700 scudi, he also made gift of his entire possessions to the couple.*

After several days, Franceschini decided to conduct his wife and her parents back to Arezzo, *and this took place in the same December.* When they had arrived there, the parents of the wife could see that the state of their son-in-law was much worse than they had imagined it. Therefore they were all the more embittered at the penuriousness they showed in the food, and many other matters. *One morning while they were at the table they heard their daughter* [Violante according to *The Book*] *denied fire for warming her bed,* and saw the Franceschini practise many other cruelties toward her. They were much troubled at it, and *all the more so when they saw a Canon of the Franceschini household, a brother of the husband, rush upon their daughter* [Violante according to *The Book*]. *He struck Francesca with a dagger in his hand, who had to make her escape by running into a room and shutting the door. Then one evening her father went to visit a friend, and when he had come back home he found the door shut. Therefore his daughter, who was still awake, was obliged to go downstairs to open it for him, but not without first having called her husband, who never even opened an eye. Then when she had gone down to open the door and had gone outside a few steps to meet her father, all of a sudden she found herself shut outside the house along with her father. For that reason they were both of them obliged to sleep outside of the house that night, her father at the inn and the daughter at one of the neighbours.* Therefore, more and more, as the days passed, the Comparini decided to return to Rome. But as they were without money they were obliged to beg it of Franceschini, who *scarcely gave them the necessary expenses of the journey.*

When the old Comparini had departed, Franceschini thought to hide what had happened. He constrained his wife to write to Rome to the Abate, his brother, to tell him that she cherished in her heart his memory. This letter was dictated by the husband himself. The ignorant girl did as Guido wished, whose purpose was to have it believed that his parents-in-law were the fomentors of the dissension which prevailed between the couple and the relatives of Franceschini

When the Comparini had reached Rome, ill-contented as they were with the house of their son-in-law, for whom they now saw

they had sacrificed their daughter, they did not know how to hold their peace about that matter, of which they themselves had been the cause. All the more so when they were harassed for the remainder of the dowry, beside the fact that they saw the rest of their property in danger. While affairs were in this state a Jubilee was announced; under these circumstances Violante Comparini revealed in confession that Francesca Pompilia, who was married to Franceschini, was not their daughter, but that the birth had been pretended. She had in fact been born of *a poor widow, a foreigner*, and had then been adopted to bring it about that the reversionary interest would fall to their house, and hence to make good the many debts of her husband. *When the confessor heard this, he charged her to reveal all the affair to her husband himself. Violante obeyed, and Comparini was greatly surprised at it, and rebuked his wife sharply.* He then submitted the matter to judgment before Monsignor Tomati; the following was spoken in sentence: It should be maintained that Francesca Pompilia shall be and is in quasi-possession of her relationship as daughter. Therefore appeal was taken by Comparini to the Tribunal of the Sacred Rota, but the suit still remains undecided. In the meantime the Franceschini, seeing that they had been deluded by this circumstance, since they could not get possession of the residue of the dowry, redoubled their cruelties to the poor Pompilia even to the point of threatening her with death. Hence she was very often obliged to save herself by fleeing into some other house, or before the authorities, or even into the presence of the Bishop, *whom she finally begged to save her by putting her in some monastery.* But this prelate thought it better to send her back to her husband's home, urging him not to mistreat her.

When the unfortunate woman saw that the admonitions of this Bishop had been useless, and that this way of softening the heart of her husband and his relatives had proved vain, and when they reproved her for sterility and for coquetry, and for other faults of their own imagining, she betook herself to an Augustinian, Romano, that he might write to his Superiors or to her parents to find some provision for her. But although the Father promised to do as she desired, his letters never reached their destination. The wretched woman was therefore desperate and determined to get to Rome in some manner or other. She told the whole matter to Canon Conti, a relative of the Franceschini, to whom she made a most pathetic picture of her situation. He was moved thereby, and answered that he would aid her, as

he did, by offering to have her taken to Rome by Canon Caponsacchi, his friend, since he himself ought not and could not do it. When the circumstances had been told to Caponsacchi, he was opposed to it, for fear of incurring the anger of the Franceschini; but when he had been urged both by Conti and the woman, he consented thereto. And on the last Monday of April the wife arose from bed as soon as day dawned, without her husband knowing about it. She took some things of her own, some jewels, and money, left the house, and at the gate of the city found Caponsacchi, who was awaiting her with a carriage. They mounted together and set out on the road toward Rome.

When Franceschini awoke and discovered the flight of his wife, as he already suspected that she had started for Rome, he began to pursue her, and on the following Tuesday [should be Wednesday] overtook her at Castelnuovo in the post-house, where she was in company with Caponsacchi. The young woman was not at all terrified at the sight of her husband, but on the contrary she mustered her courage and reproved him for all the cruelties practised upon her, because of which she had been forced to this step. Then Franceschini was thunderstruck, and did not know how or what to respond. Hence he thought it best to have recourse to the authorities. The fugitives were arrested by the Governor of the place, and both of them were taken to Rome and placed in the New Prisons, and were charged with adultery because they had run away together. He tried to prove the charge by certain love-letters which had been found, and by the deposition of the driver. But as the adultery was not proved, the Canon was condemned for three years to Civita Vecchia, and the wife was shut into the monastery of the Scalette on the Lungara.

When the husband therefore saw that this had not helped him in gaining the dowry, he decided to go back to his own country, leaving the care of his case in the hands of his brother, the Abate, who was in the service of a Cardinal. But although the Abate tried by many a turn to succeed in his intent before the tribunals, he could not achieve it. Hence he also decided to leave Rome. And he was spurred all the more by its becoming known that his sister Pompilia was with child. For this reason, the Governor of Rome had constrained him to consent that she should keep her own home as a prison, under security of 300 scudi to present herself at every demand of the Tribunal. The Abate indeed was unwilling to give his consent unless Pietro Comparini should first assume obligation, by an

official document, to furnish her with food. *And then, when he had obtained the permission of his Cardinal, he sold his furniture and books,* and when he had made them pay over the 47 scudi which had been found upon Pompilia at Castelnuovo, he left Rome. After that Pompilia bore a son, *whom she named Gaetano, after the saint to whom she made her vows.*

Franceschini, who was now overwhelmed with manifold troubles, and was urged on now by honour and again by self-interest to take vengeance, at last yielded to his base thoughts and planned to kill his sixteen-year-old wife and her parents. When four other criminals had been admitted to the scheme, he left Arezzo, *and on Christmas eve reached Rome. He stopped at Ponte Milvio, where there was a villa of his brother. There he remained in hiding with his followers until a time opportune for the execution of his designs should come.*

They spied out all the ways of the Comparini family, and on January 2, *which was Thursday,* at about seven o'clock in the evening, he approached the Comparini home with his companions. He left on guard at the street door Biagio Agostinelli and Domenico Gambassini, and knocked at the door. When he had said that he brought a letter of Canon Caponsacchi from Civita Vecchia the door was opened to him. Immediately this cut-throat Franceschini, assisted by the other two criminals, leaped upon Violante who had opened it and struck her dead to the ground. Pompilia in this crisis extinguished the light, hoping thus to escape the assassins, *and ran to the neighbouring door of a locksmith crying out for help. But when she saw that Franceschini was provided with a lantern she went to hide under the bed;* but she was dragged from there, and was barbarously slain *with 22 wounds* by the hand of her husband. Not content with that, he dragged her to the feet of Comparini, who was likewise wounded by one of the other assassins, *and was crying out "confession."*

*When the uproar of this horrible slaughter was heard abroad, people ran thither, but the criminals succeeded in escaping. But in their haste one of them left his cloak, and Franceschini his cap, which betrayed him afterward.* The unfortunate Francesca Pompilia, under the burden of such wounds as those with which she had been cut to pieces, *implored the Holy Virgin for the favour of confession, and obtained her prayer.* Hence she survived some little while, and *was able to tell about this horrible crime. She told that after the deed was done her husband had asked of one of the cut-throats who had done the murder with him, if she were*

*indeed dead. When that one had assured him, he replied: "Let us lose no time, but return to the vineyard."* And so they made their escape. *In the meantime the police had been summoned, and came with a captain. A confessor was quickly called and also a surgeon who gave his attention to the luckless girl.*

When the Governor had been informed of the outcome, he *immediately despatched Captain Patrizi* to arrest the criminals. *When the posse arrived at the vineyard, he found that these were no longer there, but that about an hour ago they had left in the direction of the highway. Then Patrizi followed without interrupting his journey, and when he had reached the inn he learned from the host that Franceschini had demanded horses with threat of violence, but they had been denied him, because he lacked the necessary order.* Hence he had travelled afoot with his companions toward Baccano. *Patrizi continued his march, and, after taking the necessary precautions,* arrived at the tavern of Merluzza. There he found the assassins, who were straightway arrested. On them were found, still stained with blood, those daggers with which they had done the murders, and *upon Franceschini were found 150 scudi in money. This arrest indeed cost the life of Patrizi, because having been overheated and wounded with a slight scratch he died in a few days.*

*Franceschini's dagger was of a Genoese pattern, triangular, and with certain hooks made in such a way that in wounding they could not be drawn from the wound without such laceration as to render the wound incurable.*

*When the criminals were known to be at Ponte Milvio, in that very inn they were heard on their preliminary examinations by notaries and judges sent there expressly, and satisfactory confession was had.*

*When the capture of the delinquents was known in Rome, a countless throng of people rushed thither to see them, while all the criminals were tied to their horses and conducted to Rome. It is told that Franceschini, while making the journey, asked one of the officers how in the world the crime had ever been discovered. And when he was answered that his wife, whom they had found still living, had revealed it, he was so astounded that he was, as it were, deprived of his senses. About five o'clock in the evening they reached the prisons. A certain Francesco Pasquini, of the town of Castello, and Alessandro Baldeschi of the same town, both of them 22 years old, along with Guido Franceschini had been the slayers of the Comparini. And Gambassini and Agostinelli were those who had stood guard at the street door.*

*In the meantime there were exposed in San Lorenzo, in Lucina the bodies of the assassinated Comparini, who were so disfigured, and especially the wife of Franceschini, by wounds in the face that they were no longer rocognisable.* The unfortunate Francesca, when she had taken sacrament and had pardoned her murderers, and had made her own will, died, not yet having completed her seventeenth year. This was on the 6th, which was the day of the Epiphany. She was able to justify herself against all the calumnies inflicted by her husband. *The surprise of the people at seeing the said bodies was great, because of the atrocity of the deed, which truly made them shudder,* seeing that two old septuagenarians and a young girl of 17 years had so wretchedly perished.

As the trial of the criminals advanced, there were many arguments made on the matter, laying stress on all the more aggravating circumstances which accompanied this horrible massacre. Others also were made in the defence with much erudition, especially by the Advocate of the Poor, who was a certain Monsignor Spreti. He succeeded in delaying the sentence, because Baldeschi made denial, even though "the cord" was administered to him twice, under which he swooned. Finally he confessed, and the others did likewise. *They also revealed that they had planned to kill Franceschini himself, and to rob him of his money, because he had not kept his word to pay them as soon as they left Rome.*

On February 22 was seen *in the Piazzo del Popolo a great platform with mannaia, and two great gallows, which had been built for the execution of the criminals. Many stands were constructed for the accommodation of those curious to see such a terrible execution, and so great was the concourse of people that some windows brought as much as six dollars each. At the eighth hour* [2 *a.m.*] *Franceschini and his companions were informed of their death and were placed in the Consorteria. There they were assisted by Abate Panciatichi and Cardinal Acciajoli, nor did they delay in preparing themselves to die well. At the 20th hour* [2 *p.m.*] *the Company of Death and of Pity arrived at the Prisons. The condemned were made to go downstairs, and were placed upon separate carts to be drawn to the place of execution.*

*The first to mount the cart was Agostinelli, the second Gambassini, the third Pasquini, the fourth Baldeschi, and the fifth Franceschini, who showed more intrepidity and composure than the others, to the wonder of all.*

*They left the Prison and followed the Pilgrims Street, the Street*

*of the Governor, of Pasquini, Piazza Navona, the Pantheon, Piazza Colonna, and the Corso.*

*The first who was executed was Agostinelli, the second Gambassini, the third Pasquini, the fourth Baldeschi, and the last Franceschini. When the last-named had mounted the platform, he asked pardon for his sins, and begged them to pray for his soul, adding that they should say a Pater, an Ave, and Salve Regina for him. When he had made the confessor announce that he was reconciled, he adjusted his neck upon mannaia and, with the name of Jesus on his lips, he was beheaded. The head was then shown to the people by the executioner.*

*Franceschini was low of stature, thin and pallid, with prominent nose, black hair and a heavy beard, and was* fifty years of age. *He wore the same garb as when he committed the crime—that is a coat of brown cloth, black shirt, a vest of goatshair, a white hat and cotton cap; clothed presumably as he had been when he had set out from Arezzo.*

The execution took place during the *Pontificate of Innocent XII.*, in 1698.

# TRIAL AND DEATH OF FRANCESCHINI AND HIS COMPANIONS

FOR THE

## MURDER OF COMPARINI, HIS WIFE, AND DAUGHTER,

WHICH HAPPENED DURING THE TIME OF INNOCENT XII.

## EDITORIAL NOTE

THE following additional account of the Franceschini murder case was discovered a few years ago in the Royal Casanatense Library, Rome (Misc. MS. 2037), in a volume entitled *Varii successi curiosi e degni di esser considerate*, containing thirteen pamphlets by various authors, most of them concerning famous criminal trials, from Rome of the seventeenth century. The volume is in a hand of the early eighteenth century, and contains an endorsement to the effect that a copy was made from it in 1746. The Franceschini murder is the subject of the tenth narrative of the volume. Internal evidences indicate that it was written somewhat later than the secondary source pamphlet, by one who has considerable knowledge of the crime and whose attitude of mind shows him to have been a priest. It presents a better story and a fuller account of the motives of the actors, especially those of Abate Paolo and Violante, together with a number of additional matters of fact not contained in *The Book*. It never fell in Browning's way, and hence has no immediate source-relation to the poem, but it does prove in some cases the accuracy of Browning's conjectures of unknown facts when definite data failed him.

The pamphlet was printed in translation by W. Hall Griffin in the *Monthly Review*, November 1900. The present version has been made by the editor from a transcript of the original Italian executed by a friend in Rome.—C.W.H.

# TRIAL AND DEATH OF FRANCESCHINI AND HIS COMPANIONS

FOR THE

# MURDER OF COMPARINI, HIS WIFE, AND DAUGHTER

WHICH HAPPENED DURING THE TIME OF INNOCENT XII.

THE Abate Franceschini, born in Arezzo, Tuscany, of a family which was noble, but poor of estate, having the cleverness to advance his own fortunes, proceeded to the city of Rome, and was admitted by Cardinal Lauria into his household as Secretary of the Embassy. His inherent mental aptness won for him the favour of the Cardinal, who was held in great esteem in the Sacred College by reason of his learning, and who stood so high that he might well have aspired to the Papal Chair. In this lucky juncture, Abate Paolo, wishing to take advantage of his good fortune, thought to provide a wife for his brother Guido and to recoup his family fortunes by a rich dowry. Guido had served Cardinal Nerli in the same capacity, as Secretary of the Embassy; but either because he had not the good luck or the ability of his brother he left that service. Although Paolo knew that the idle state of his brother would be hurtful to his claims of dowry, he did not cease aspiring to a very advantageous one, flattering himself that his own distinction might make up for the shortcomings of his brother.

Now Guido had reached full maturity, was of weak temperament, ordinary in appearance, of a disposition more gloomy than pleasant, and, moreover, was of scant means. Hence, unless Abate Paolo should use his own influence, he could have little expectation for Guido. After having attempted several alliances of high rank, Paolo fixed his thought on Francesca Pompilia, the daughter of Pietro and Violante Comparini. As she was their only child, and as her parents were too far advanced in years to have other offspring, she would fall heir to a reversionary interest of 12,000 scudi; and he hoped that he could

easily make the match, as the Comparini were rather inferior to him in birth.

A certain hairdresser frequented the home of the Comparini with the familiarity admitted by those women who desire to make themselves appear more beautiful to their husbands' eyes than they are and which some husbands tolerate who rely too much upon the fidelity of their wives. Paolo considered this woman to be the best means for aiding his designs for the marriage of Guido, and the latter often went to her shop with the purpose of winning her confidence by odd jobs. When he had often turned the talk to the subject of taking a wife, she told him one day he might readily apply for the daughter of the Comparini, for she had a suitable dowry, besides being heiress to a reversionary interest, and was of a small family connection, which were his very requirements. When through her efforts he had succeeded in achieving the marriage, it was understood he should reward her with 200 scudi. The hairdresser lost no time in broaching the matter to Violante, who, anxious for the advancement of her daughter and for the establishment of her own interests, agreed to speak of it to her husband, and, if the matter were as stated, to persuade him to effect it. Violante spoke to her husband about it and he did not reject the proposal, provided that the vaunted riches of the Franceschini were verified, but he said this would have to be given in a written statement attested by well-known and reliable persons. When the hairdresser had carried back this word to the Franceschini, they sent a statement of their real estate in Arezzo, with an income amounting to 1700 scudi, attested by persons well known to the Comparini, and who confirmed it to them orally.

Abate Paolo, fearing lest this fortune might escape him, gave them no time to change their minds, and in order to make the matter surer he desired to secure it by the hand of Cardinal Lauria, his patron, by whom he had the marriage agreement drawn up; for his Eminence was pleased to show kindness to the advantage of a man whom he regarded with some favour. Meanwhile Comparini had become better informed of the rank and property of the Franceschini and found them far different from the preceding account, both in rank and in property. Therefore he had a warm dispute with his wife, who persisted in the marriage, and declared that he had been advised by persons envious of the good fortune of one or the other house, and who wished to hinder it, and that she was not shaken in her original desire; for she was very sure, from other truthful witnesses, that

the Franceschini were of the first rank of nobility of Arezzo, and not of the second, as those had said, and that the property given in the list had been untampered with. But the more she warmed to the matter, the cooler became Pietro; for being very diplomatic, if he could not gain, at least he wished not to lose by the marriage of his daughter. But what does not a man lose when he allows his wife to rule him? He loved her so tenderly that from the first day of their marriage he had constituted her the arbitress of his wishes. Violante, nevertheless, fearing lest Pietro, in a case of such importance, might be more influenced by reason than by flattery, could suffer no delay in making secure the reversionary interest which another house could claim if the Comparini were without an heir; she therefore resolved to have the marriage performed without the knowledge of Pietro. When she had secured the consent of the daughter, who was always obedient to her commands, and had made an appointment with Guido, she conducted her, suitably clothed, one morning to San Lorenzo, in Lucina, and espoused the two.

Pietro felt the blow keenly, but being unable to find any remedy for it, he cloaked his anger with the show of being displeased at not having been present, and this displeasure would cease in him with the joy of the nuptial feast, which should be in their house. He assigned to his daughter as dowry twenty-six bonds, with future succession to the remainder. On the very same day, after talking of the advantages which would result to both houses from the union of their interests, they decided upon the removal of the Comparini to Arezzo, which followed in a few days, and with it the absolute administration of the property by Guido.

When they had reached Arezzo the Comparini were received by the mother and relatives of Franceschini with all that show of love which is customary on such occasions. But very soon, from constant association, disturbances arose, and thence they passed to hostilities. The mother of Guido, a proud, avaricious woman, who governed the household despotically, took to stinting it even in the necessary food. This moved the Comparini to complaints, to which the Franceschini first responded with insults and then with threats. This was a thing Violante could not tolerate, for, being a woman, she had her own share of natural arrogance. So she began tormenting Pietro, cursing the day when he had decided to move to Arezzo, laying the blame on him for all that of which she had been the cause. And Pietro, who was one of those men who let themselves be over-

come by a couple of crocodile tears of their wives, instead of reproving her for the undertaking (although she had concluded the marriage against his wish and without his knowledge), entreated her affectionately to bear with patience the abuses, which would possibly cease when the Franceschini saw them defended by their daughter.

At that time [November 30, 1693] passed from this life to Heaven Cardinal Lauria, a churchman of merit beyond all praise. Then Abate Paolo was elected Secretary in Rome of the Religious Order of Malta. At this the haughtiness of the Franceschini increased so much that they considered it grand good fortune for the Comparini to be considered their friends, not to say their relatives. Violante being no longer able to live under the proud command of another woman, since she had been in the habit of domineering, as her husband had been subject to her wishes, so tormented him that she induced him to take up his residence in Rome again. For this purpose the Franceschini gave them a sum of money sufficient for the journey and for the most necessary furniture in the home.

Scarcely had they reached Rome when, to the surprise of everybody, it was reported that Pietro had dispatched a judicial warning, in which he set forth that Francesca Pompilia was not really his own daughter and that therefore he was not obliged to pay the dowry. He brought the attestation of Violante his wife, who had declared that to check her husband's creditors in the matter of the trust fund and to enjoy the income of the bonds she had feigned to be pregnant and, that her husband might not discover the trick, she agreed with him that when she became pregnant they should abstain from association until after the birth of their child. And so, on the very day of this pretence, they took separate bedrooms; still further, by well-arranged clothes, she feigned the swelling of the womb, and by suitable drugs made pretence of nausea until her time was come. She then took advantage of a day when Pietro was occupied in his lawsuits, to bring forth the pretended birth, which was well carried out by the sagacity of a midwife in the secret, who provided whatever was necessary. And that the house servant might not detect the trick, they sent him to the apothecary to secure certain medicines. At the same time the midwife went to get a little creature whom she had received the day before from a neighbour, who was already in the secret. When she had returned to the house she summoned a familiar friend of the Comparini from a window. Matters were so well arranged that

when the woman arrived, there was nothing more to do than to make her believe what was not really so. And to trick more surely the thought of this neighbour, they feigned that when Violante wished to pass from the bed to a chair, she fainted into the arms of the woman by reason of her pains, since the midwife could not run up in time

This unexpected act of Pietro, which became known in Rome immediately, was heard with less wonder than scorn. The just anger of the Franceschini would have undertaken due vengeance if it had not been mitigated by the hope that, since Pompilia was not the true and legitimate daughter of Pietro and Violante, the marriage would be annulled and Guido's wounded reputation would be healed. But when he had taken counsel with several authorities and found they were of different opinions, he was unwilling to risk so doubtful an affair, in the promotion of which they would necessarily confess and presuppose that she was not the daughter of the Comparini, and by this confession they would be prejudiced in their claims to the dowry. They opposed the judicial notice, and obtained for Pompilia the continuance of her quasi-relation as daughter, together with a decree for the transfer of the dowry bonds. But Pietro appealed to the Signature of Justice so trickily that the Franceschini had the expense of the transfer, but not the enjoyment of the income, since they obtained from it not even a two months' payment.

The unfortunate Pompilia was the victim of the hatred of these two houses; for she was left alone in Arezzo at the will of her husband, her mother-in-law, and her relatives, who were mortally offended at her parents, and she was hourly threatened with death. In so deplorable a state the courage even of a more mature woman would have failed, not to speak of that of a girl only sixteen years old. For she was innocent of the wiles of her mother and of the duplicity of her father and by her own good qualities she was worthy of tenderness rather than cruelty. The unhappy one suffered as best she could these tyrannies which were ever increasing, but despairing of all hope of peace, she often had recourse to the Governor of the City, that he might interpose his authority with the Franceschini. As this was of no avail, she threw herself at the feet of the Bishop, who had Guido come into his presence and who tried to reconcile him. But Guido's anger increased all the more because of this public recourse, and he threatened Pompilia with certain death if she should ever try it again.

When the poor child saw every way to peace closed against

her she appealed to Canon Conti, a relative of the Franceschini, who was very well informed of her wretchedness because he visited the house, and she begged him to save her life, which was in continual peril. He was moved to pity, for he knew that she had no other remedy than flight. As he could not personally assist in this, lest he would have to bear the hatred of the entire family connection, he suggested to her that the very person for such an enterprise was the Canon Caponsacchi, his intimate friend and somewhat related to him by blood, whose courage was no less ready to meet danger than to overcome it.

Pompilia accepted the counsel of Conti, who lost no time in opening the affair with Caponsacchi. He at first showed some unwillingness, as he hesitated to carry away a wife from her husband, even with the sole purpose of conducting her to her own parents. But when he had been fully informed of the insufferable abuses of Guido and his relatives his pity prevailed over all other considerations and he accepted the undertaking. Pompilia, who was eager for this, tried to win him by letters and amorous verses, yet always keeping herself true to her marriage vows, as one may read in her letters. In some of these she praises the modesty of Caponsacchi, in others she reproves him for having sent some octaves which were slightly reprehensible, and she urged him to keep unstained that nobility of which he boasted. On the day appointed for flight, with the assistance of Canon Conti, the two took their places in a carriage and travelled as fast as they could, without resting save when it was necessary to change horses. They arrived the second morning at dawn at Castelnuovo, and, in spite of the fact that the host had assigned them a bed for repose, Pompilia seated herself in a chair and Caponsacchi went down to the stable to urge on the driver.

When Guido awoke after the flight of Pompilia and perceived that she was not in bed, he arose in a fury, and, seeing the jewel-box open and minus the jewels and money, which it had contained, he surmised what had happened to him. Accordingly, on a good horse, he sped along the Roman road and overtook the fugitives at the abovesaid inn of Castelnuovo an hour after their arrival. When Pompilia saw him, with that courage which desperation may arouse even in the weakest spirits, she seized Caponsacchi's sword which lay upon the table, unsheathed it, and thrust at his life, calling him betrayer and tyrant. Guido, fearing lest her spirit no less than the valour of Caponsacchi might bring his death rather than revenge, turned his horse and

rushed to the authorities. He had the fugitives arrested and conveyed to the New Prisons, where he entered charge of flight and adultery against them.

The Abate Paolo who, as has been said, was the Secretary of the Religious Order of Malta in Rome, made noisy recourse for his honour to the Pope, and he put a petition before Monsignor Pallavicino, the Governor, demanding that he declare Caponsacchi the seducer of his sister-in-law, and both of them guilty of adultery, and that his brother for that reason was entitled to gain the entire dowry. Legal proceedings were instituted against them according to the most rigorous forms of law, but no proof of guilt was found against Caponsacchi and Pompilia except the love-letters written at the time of the arranging of the flight, the undertaking of the flight itself, and the deposition of the driver. For the latter declared that he had sometimes seen, when he had turned back during the journey, that they were joined face to face, that is cheek to cheek, a matter which did not make full proof of fault, since the rough roads and the headlong speed of the journey jostling them about might have been the cause of it. Wherefore the Court deemed it prudent and just to sentence Caponsacchi to three years' relegation in Civita Vecchia for his rashness in running away with a wife from her husband, even though the motive was pity. While the case of the Franceschini against Pompilia was on trial, Pompilia was transported with their consent, as their prisoner, into the Monastery of the Scalette on the Lungara, with the obligation that Guido, her husband, should provide her food. There, after a little while, it was discovered that she was pregnant, and as it no longer comported with the reverence of that place that she should remain there, with the consent of Abate Paolo, who had power of attorney for his brother, Monsignor the Governor ordered that she should pass into the home of the Comparini, her parents, under security of 300 scudi to keep it as a secure prison; and he declared that Guido's obligation for her food should cease the very day she left the monastery.

This cause, in which the Franceschini were not obliged to have hand for mere honour's sake, was seen to have its chief motive in selfishness. Therefore there was not a company where the conduct of one or the other party was not censured. For this reason the Religious Order of Malta gave secret intimation to Abate Paolo that he should resign his office. At the loss of this honourable post, rein was given to the evil tongues of his adversaries. This put Abate Paolo in such straits that, ashamed to

meet his dearest friends, he decided to leave Rome and to pass to a clime where information of the dishonour that so afflicted him would never come.

When Guido was informed of the departure of his brother and of the obligation resting on him of repairing the honour of his house, he thought that to go into voluntary exile, as his brother had done, would only prove the baseness of his own mind. For he had been justly charged with this, since at the time he had overtaken his wife with her abductor he had failed in that very place to take the vengeance which was demanded at his hands.

In due time Pompilia had given birth to a son, who was sent out of the house by the Comparini to nurse. Thereupon every one believed, and especially Violante, that the ties of blood would move Guido to a reconciliation with his wife. For in spite of their declaration that Pompilia was not their daughter, the minds of the Comparini might still be disposed to some reconciliation. But Guido's thought was quite different, for he was continually stirred, even in the absence of Abate Paolo, to plot the removal from this world of the entire memory of his dishonour by the death of Pompilia, Pietro, and Violante, and possibly of still others.

Guido had in his employ, in the country, a daring and wicked labourer [Alessandro Baldeschi] to whom he often exaggerated the shame which his wife and the Comparini had brought upon his house. To him Guido revealed that with his assistance he wished to purge with their blood the stain to his honour. The cut-throat straightway accepted and declared that, if there were need of other company, he had three or four friends for whom he would vouch. Guido replied that he should take three bold and trusty ones to make sure against any possible resistance, and should use all care to secure them at the lowest possible price.

When all had been agreed upon, and arms suitable for the affair had been prepared, Guido, with his four companions in disguise, secretly took the road to Rome. Reaching the home of the Comparini at eight o'clock in the evening, one of them knocked at the door, and when Pietro responded, the murderer told him that he had a letter to give him which had been sent from Civita Vecchia by Caponsacchi. When the women heard this they told Pietro to have him come back again next morning, urging him not to open the door. But he was curious about the news from Caponsacchi, and when the murderer replied that he could not come back in the morning, as he was obliged to leave

that night, he opened the fatal door and thereby admitted his own death and that of Violante and Pompilia.

Guido in a transport of rage leaped in with two companions, leaving the others on guard. They first dealt the poor old man many blows, and deprived him of life before he could lift his voice. Scarcely had the unfortunate women seen this when, transfixed with like wounds, they suffered the same fate. Upon the unfortunate Pompilia fell the blows of her husband, accompanied with countless insults, and after he had trampled her several times under foot and wounded her anew, not trusting his own fury, he told his companions to see if she were really dead. One of them lifted her by the hair and let her fall again, and assured Guido that she was no longer alive.

When this barbarous murder had been concluded and the money agreed upon had been paid to the cut-throats, Guido wished to leave them, but they would not allow him to desert them for fear that one might kill another, as frequently happens for hiding such misdeeds. Or else the murderers, while united with their leader, had agreed to kill Guido as they thought he might have a large sum of money. Hence they did not consent to his leaving them and they took the road toward Arezzo together, which they agreed to make on foot, as they could not secure posthorses.

From these repeated wounds Pietro and Violante were quite dead, but not Pompilia, though her wounds were more numerous. For because of her innocence she was especially helped by the divine mercy, and she knew so well how to feign death that she deceived the murderers. When she saw that they were gone, with her dying breath she mustered sufficient strength of voice to make the neighbours hear her cries for help.

They found her in the last extremities, and eagerly ministered first to her soul and then to her body. Her wounds were so numerous and of such a nature that although they did not immediately kill her, they made her death certain. This occurred a few days later, to the sorrow of all those who assisted her and who had knowledge of this pitiable case. The fortitude with which she suffered the pains of her treatment caused as much wonder as her resignation to the Divine Will caused love. She not only did not blame the cruelty of her husband, but with fervent prayers she besought God to pardon him. The compassion of her assistants both for her soul and for her body I attest by the following sworn statement concerning not only her innocence, but the happy passage of her pure soul to heaven.

[Then follow the affidavits of Fra Celestino and others given in *The Book*].

Divine justice, which would not suffer so atrocious a deed to go unpunished, caused the criminals to be overtaken by the authorities at the break of dawn at an inn a few miles from Rome. For when they had eaten a little, they went to sleep by the fire, fatigued by the journey and overcome with drowsiness. The police rushed violently in upon them and, pointing carbines at their breasts, assailed and bound them at once. They were straightway taken to the New Prisons, and the Governor apprised the Pope of this barbarous murder and of the arrest of the guilty. He gave commands that, without delay and with all rigour, trial should be brought, this being a case which, by reason of the consequences which might arise from it, should be examined into with very special attention.

Far less torment than would seem to be necessary had to be applied to get the confession of the murderers and of Guido, who more than the rest had stood by his denial. But at the sight of torment he had not the heart to resist longer and confessed fully, saying indeed that the crime had had no other motive than the reparation of his honour which had been so publicly offended. This was a matter which any common man would have undertaken, not to speak of himself, who was a gentleman; and if on his first examination he denied the truth of this, he had done so lest he might injure his companions, who had aided him in a deed worthy of all sympathy, because he had honour as his sole end.

With the confession of Guido and its ratification by the rest the process was finished, and they were sentenced, the cut-throats to the gallows and Guido to mannaia, a means of death conceded rather out of respect for his being in clerical orders than for any other reason. The Advocate and Procurator of the Poor had written so ably in their defence on the point of honour that there is no memory of more learned arguments. But the features of the crime were so many (and all of them punishable with death) that they were overcome no less by their nature than by their number. Among such features was the bearing of arms prohibited under capital penalty, the death of Pietro and Violante who were not accomplices in the flight of Pompilia, the murder while a lawsuit was pending, and in their own home which place the authorities had with the consent of Guido assigned to Pompilia as a secure prison. The many other weighty charges which displayed the great learning of the

defenders were the just cause of the death of the accused. Yet with the usual hope of all those who make confession of capital crime, Guido flattered himself that he could save his life by reason of his honour. At the unexpected announcement he did not give up to such a frenzy as frequently follows in those who experience so terrible a disaster, but, as if stupefied, after a few minutes he heaved a deep sigh, accompanied by a few tears, which by their extraordinary size showed dying symptoms. He said: "I well feared a heavy sentence, but not that of death. My crime is great, but love of honour has never suffered me to perceive what it was until now that sentence has been passed, which I hold in such reverence that I wish to appeal only to God, to whom alone I turn for the only mercy. Without His will I should never have reached this awful pass, which may be a comfort to me and not a source of bitterness, that I may gain by entire resignation to His will the merit of His pardon." And then he threw himself into the arms of the compassionate Frati and showed such signs of true contrition that their prayers were accompanied by tears rather than by exhortations.

His four accomplices did not submit themselves with the same readiness, for as they were of lower birth so were they less swayed by reason, which would render them impressible to the punishment they had merited. The oldest [Baldeschi] and youngest [Agostinelli] were the most obstinate, the one from having a heart hardened by so many years of evil life, and the other being all too sensitive to so harsh a punishment for a single crime, in the very flower of his youth, without ever having spilled a drop of blood, and with the sole fault of having been induced to stand as guard at a door through which Guido had had to pass, to purge himself of the stains to his honour by the blood of his foes. As the hour of execution drew nearer, the stubbornness of these wretches so increased that the Frati despaired of their repentance. At last the Divine Mercy, which works miracles when we least expect it, entered their hearts and gloriously demonstrated His omnipotence. They finally trusted in God, and the memory of those faults which had made them obstinate, and which were now illuminated by the Divine Grace that disposed them to penitence, fitted them for pardon. When these souls had been secured for God after such a hard contest, the execution passed from the New Prisons at Tor di Nonna to the scaffold raised in the Piazza del Popolo in view of the gate and of the Corso. In the midst was the block on a

lofty scaffold, larger than usual and with steps made with particular care; on the two sides the gallows were placed at equal distances. In spite of the vastness of the Piazza, not a single foot was left which had not been occupied by stands, which were covered with tapestry and other ornaments forming a theatre for festal celebrations rather than for a solemn tragedy.

His four companions preceded Guido, each of them in a separate cart, assisted by the devotion of the accustomed Frati [The Brotherhood of Death], and followed by a countless concourse of people praying for a blessed departure, which in view of their contrite resignation seemed not at all doubtful and even a certain hope. Rarely did Guido Franceschini turn his eyes from the crucifix, except when nature, overwearied by the steadfastness of his gaze, made him turn away his head but not his heart, which had been wholly given to his Creator so that none was left for himself.

When he had reached the Piazza di Pasquino, and the cart had stopped before the church of Agonizzanti, where on days of public execution it is customary to offer the Sacrament to the delinquents condemned to death and therewith to bless them, Guido knelt and began to recite, in a voice quite audible to bystanders, certain verses of the *Miserere*, and among them this, "Hide thy face from my sins and blot out all mine iniquities." He accompanied this with such signs of sorrow and penitence that the people by their tears showed no less grief than the one condemned.

With equal devotion his companions received the same blessing, but the behaviour of the youngest [Agostinelli] was remarkable beyond belief, who beside himself with his love of Heaven and of God, by his expressions which exceeded his own capacity, confounded the wisdom of his pious assistants.

Thence by the most densely populated streets they continued the journey to the Piazza del Popolo, where they all died, Guido last, with those acts of contrition which their preparation had shown. As the youngest had displayed most blessed signs during life, so it pleased God that he met his death likewise, for at the moment the executioner did his work, he clasped between his breast and his hands the image of that crucifix whereby they had become certain of Divine Pardon. This assured the people of his salvation as his untimely death had aroused their pity.

Rome has never seen an execution with a greater concourse of people, nor does it remember a case on which there was such

general talk as on this. Some defended the Comparini, because they had suffered abuse, others the Franceschini as it was a matter of honour. But, on looking at the matter dispassionately, they were adjudged to be equally guilty, except that Pompilia, who was entirely ignorant of the truth, was without blame; for she had consented to the marriage at the command of her mother without the knowledge of her father, and had fled from her husband for fear of death with which he had often unjustly threatened her.

From trickery arose the union of these two houses, from the Franceschini in frauds regarding property they did not possess, from the Comparini by the pretended birth, or by this very pretence if the birth were real. The trick arose from greed of gain in Pietro to secure the trust moneys for himself, and in the Franceschini to minister to their own ease; so all was done contrary to laws both human and divine. Hence a bad beginning was followed with a wretched ending, as has been told above.

# NOTES AND COMMENT

1. *Title-page* (p. 1). The manuscript title-page of the *Book* is closely paraphrased by Browning, *R.B.* I. 122-31, the word "position" being used as the equivalent of Italian *posizione*.

2. *The Index* (p. 3) (Italian, *indice*) is a manuscript table of contents, evidently supplied by the original collector.

3. *A Transcript of the sentence against Pompilia* (pp. 5-7) in the Criminal Courts of Arezzo, dated February 15, 1697 (for 1698). Parallel with the Process of Flight (*see* Note 18) in Rome, the Franceschini family evidently instituted criminal proceedings in Arezzo against the fugitive Pompilia, charging her with theft and adultery. Signor Guillichini and the driver Borsi were included in the action as accessory to the crime. The Franceschini were able to secure the condemnation here which was not obtainable in Rome. Under security of this sentence, granted in December 1697, Guido could safely go on with the assassination of his wife, so far as Tuscan law was concerned. The transcript in the *Book* is dated February 15, while the murder trial was at a crisis, and was probably sent to Rome by Signor Cencini to assist Guido in his peril. It is noteworthy that Guido did not include Caponsacchi in his accusation in Arezzo.

4. *Romana Homicidiorum.* The frequently repeated designation of the case—*Romana causa homicidiorum*—Roman trial for murders.

5. *Hyacinthus de Archangelis* (Italian, *Giacinto Arcangeli*), *Procurator Pauperum*, was Guido's chief defender, not an attorney employed privately by the defendant, but an official States' attorney for the defence. The Roman court procedure in all cases assumed the right and obligation of the State to conduct both sides of a criminal case.

6. *Desiderius Spretus, Advocatus Pauperum*, was the co-defender of the accused. Humphrey's *Urbs et Orbis*, p. 428, makes plain the respective functions of the two attorneys: "The advocate is a man skilled in civil and canon law, who defends causes in writing or by word of mouth, on the point of law, setting before the judges that which is true in law, or best founded in law, or the principles of law which ought to be applied in a particular case. His is the scientific part of the cause, and he speaks only to the point of law. Matters of fact are to be established by the procurators, and it is upon these established facts that the advocate develops his judicial conclusions."

7. *Joannes Baptista Bottinius, Fisci et Cam. Apost. Advoc.* (Advocate of the Fisc, or Treasury, and of the Reverend Apostolic Chamber), the chief prosecutor of the criminals, with functions equivalent to those of the prosecuting or States Attorney in the Common Law. Browning continually used the clipt form, Fisc.

8. *Franciscus de Gambis, Procurator Fisci*, was the coadjutor in the prosecution, opening the case in Pamphlet 5, but thereafter playing little part in the case.

9. *Antonius Lamparellus, Procurator Charitatis*, the attorney who, in Pamphlet 17, defended the memory of the dead Pompilia for her heir and against both the Franceschini family and the Nunnery of Convertites (*see* Note 10), both of whom were accusing her memory to gain her estate.

This trial in the criminal court of the Governor, took place between the death of Guido, February 22, and May 17, 1698. The decision "for absolution" was made *definitive* by the decree of court, September 9, 1698 (Pamphlet 18).

10. *The Nunnery of the Convertites.* Within a month after the death of Pompilia the Nunnery of *Sta. Maria Maddalena delle Convertite al Corso* (founded 1520 *pro mulieribus ab inhonesta vita ad honestam se convertentibus*) laid claim to the whole of Pompilia's property on the ground of their privilege of receiving the property of women of evil life who died in Rome.

11. *Most Illustrious and Most Reverend Lord Governor.* All the arguments and the summaries of evidence in the murder case are addressed to the Governor of Rome, but the Vice-Governor, Judge Venturini, seems to have presided in his stead.

12. The title and imprint on the right half of the final page of each of these official pamphlets was evidently for convenience in filing the documents when folded into bundles. The imprint *Typis Rev. Cam. Apost.* (Type of the Reverend Apostolic Chamber), is the official imprint of the Papal press.

13. *The Deposition of Angelica* (pp. 49-53). Angelica, a domestic in the Franceschini home during January 1697, while the Comparini were living in Arezzo with their son-in-law, was probably carried back to Rome by the Comparini on their return to Rome that she might serve as a witness to the poverty and parsimony of Guido. She makes her affidavit at Rome, June 24, 1694, evidently for use in the suit brought by Comparini to recover the dowry paid with Pompilia. How far it is true and how far it is the prejudiced and bitter word of a resentful servant who had been kicked out of doors, we cannot say. But its publication through court procedure must have been bitterly humiliating to the Franceschini. What was worse, the Comparini probably used this as a part of the slanderous stories they took pains to print and circulate in Rome (p. 181).

14. *Diverse Attestations* (p. 53). These attestations, made June 17, 1697, nearly seven weeks after the arrest of Pompilia at Castelnuovo, were evidently secured by her lawyers for her defence in the Process of Flight (Note 18).

15. *The letters of Signori Romani and Albergotti* are undated, but were probably written soon after the departure of the Comparini from Arezzo in 1694.

16. *Pompilia's Letter to Abate Paolo* (pp. 56-7). The much discussed letter of Pompilia to Abate Paolo, dated June 14, 1694, full of calumniation of her parents, who had left Arezzo only three months before, could not have been written by the fourteen-year-old girl voluntarily. Guido must have composed it as a counter attack on the Comparini, who were bringing suit against him at Rome, and were loading him with shame.

17. *The Attestations of Fra Celestino and Others* (pp. 57-60), dated January 10, only four days after the death of Pompilia, was given at the instance of Pompilia's executor, Tighetti. It is a most important piece of evidence, and is cited repeatedly during the trial. Its genuineness and sincerity are beyond question, and Browning gained from it most of his faith in the innocence and saintly patience of Pompilia.

18. *Process of Flight.* After the arrest of Pompilia and Caponsacchi at Castelnuovo they were taken to Rome and lodged in prison. They were soon brought to trial on the criminal charge of adulterous elopement. The case seems to have been in the same court which tried Guido for murder eight months later, and probably continued in a desultory fashion all summer. In this case both of the accused made the deposition later included in the *Book.* In this trial also, Guido tried to introduce the

testimony of the harlot-servant, Maria Margherita, and the love-letters. The case was never decided so far as Pompilia was concerned.

19. *The Deposition of Pompilia* (pp. 90-5), dated May 13, 1697, two weeks after her arrest at Castelnuovo, giving the causes of her flight from her husband's home, was made by Pompilia for her own defence in the Process of Flight. The marginal comments, adverse to her, are, of course, the prejudiced comments of Guido's lawyers.

20. *The Deposition of Caponsacchi* (pp. 95-8), made about the same time and under the same circumstances for the Process of Flight, was reintroduced as evidence in the murder case, but there is no reason to think that Caponsacchi was brought into the latter case in any other way.

21. *The Love-Letters* (pp. 99-106). These letters are one of the most elaborately discussed pieces of evidence in the *Book*. Guido claimed to have found them at the inn of Castelnuovo after the arrest of the fugitives, and he offered them in court during the Process of Flight, as a proof of adultery in his wife, but they were thrown out by the court. Their conventional fine-letter-writing, their studied innuendo and finesse, were quite beyond the capacity of an illiterate girl like Pompilia. They were probably composed by Guido, and if so, they prove that he was basely scheming to drive his wife into dishonourable flight that he might disgrace her and cast her off. The eighteenth letter was specifically denied by Caponsacchi in his cross-examination.

22. *The Sentence of Relegation* (p. 106) for three years in Civita Vecchia was decreed against Caponsacchi at the close of the Process of Flight in September, 1697. It is commensurate with priestly indiscretion rather than with crime.

23. *The Account of Fact* (Pamphlet 10). This anonymous Italian pamphlet is not at all a part of the official record of the murder case. It has no imprint and is in entirely different face of type, and must have been printed privately for circulation outside the courts. While much less technical and formal than the arguments of the lawyers, and much more studious of popular effects, it slips back repeatedly into the thought and the language of Arcangeli, the defender of Guido. It probably suggested Half-Rome in *The Ring and the Book*.

24. *The Response* (Pamphlet 15) is a highly rhetorical, but effective, retort to the anonymous writer. It was written during the later stage of the murder trial, and was probably the work of Signor Bottini. It likewise is without imprint and signature, but may have been broadly scattered throughout Rome.

25. "*To keep to this home of Pietro . . . as a prison*," *Domus pro Carcere* (p. 159). For a month after the sentence against Caponsacchi, Pompilia was kept prisoner in the refuge called the *Scalette*—a provision for her safekeeping, not a punishment. On October 12, she was permitted to give bond to keep the home of her foster parents, the Comparini, as a prison, *Domus pro carcere*, sentence against her being suspended.

26. *The Scalette*. The *Conservatorio di S. Croce della Penitenza alla Lungara* was an institution for penitent women, founded 1615, and popularly called *Scalette*, because of the two adjoining stairways. Browning confuses this institution with the Convertites (Note 10).

27. *Baptismal Record of Pompilia* (p. 159). This note, taken from the parish record of San Lorenzo, in Lucina, enables Browning to make the exact statement of Pompilia's age and her full name, as given in the opening lines of her monologue.

28. *Pompilia's Letter* (p. 160) to her foster parents, written from prison at Castelnuovo only two days after her arrest, is her plea to them

for assistance. It was probably cited as evidence in the Process of Flight.

29. *The Will of Pietro Comparini* (pp. 160-1), evidently drawn up after he had learned Pompilia was not his own daughter, and before her return to Rome, aimed to prevent her being disinherited for that reason. Its personal tone is good, and it is almost the only first-hand evidence of the character of Pietro to be found in the *Book*.

30. *Power of Attorney* (p. 162). Under date of October 7, 1694, Guido grants full power of attorney to Abate Paolo, who was representing him in the lawsuits in Rome and in other matters of business.

31. *Arcangeli's Manuscript Letter* (pp. 235-6). On February 22, 1698, only a few hours after the execution of Guido, Signor Arcangeli, his legal defender, announces the end of the case to Signor Cencini, the Florentine lawyer who collected the *Book*, and who seems to have been professionally related to the Franceschini family, as he had sent certain "proofs" to assist the cause of Guido, probably including the report of the criminal condemnation of Pompilia in the Tuscan courts. (*See* Note 3). This letter is reproduced by Browning, *R.B.* XII. 239-98.

32. *The Other Letters* (pp. 237-8), written on the same day and to Signor Cencini, give a few additional details. The writers seem to have been professionally associated with the Franceschini family.

33. *Francesca Pompilia*, foster daughter of the Comparini, *b.* July 17 1680; was married to Guido Franceschini, December 1693; fled from her husband's home in Arezzo, April 29, 1697; arrested at Castelnuovo, May 1 wrote to her foster parents from her prison at Castelnuovo, May 3; made deposition in Rome concerning her flight, May 13; was on trial for flight and adultery during the summer of 1697; was placed in the convent of the *Scalette*, September 1697; removed to the home of the Comparini as prisoner October 12, 1697; gave birth to a son, Gaetano, December 18, 1697; was assassinated January 2, 1698; died January 6.

34. *Giuseppe Maria Caponsacchi*, *b.* May 26, 1673, was invested Canon of the Church of Santa Maria della Pieve, November 26, 1693, and resigned "of his own accord," May 15, 1702. He is referred to in the *Book* as a man of courage, and his words as he faced Guido at Castelnuovo are significant: "I am a man, and have done what I have that I might save your wife from death." His affidavit is convincingly straightforward, in spite of certain discrepancies with Pompilia's statements, and there is evident moral indignation in his replies under cross-examination. His participation in the dangerous flight in mere amorous intrigue seems unbelievably foolish, and could hardly have been carried through save on the motive he assigns, courageous "Christian compassion." In September 1697 he went to Civita Vecchia under sentence of three years' relegation.

35. *Canon Conti*, called the "mediator in the flight," was brother of Count Aldobrandini, who had married Guido's sister, and Conti is accordingly spoken of as a "relative and frequenter of the Franceschini home." He had been invested Canon of the Pieve, August 14, 1692. He must have been fully informed of Pompilia's sufferings, and to him she turned at last for help. Deeming it improper for himself to afford her relief, he urged his friend Caponsacchi to accompany her. No criminal procedure was instituted against him in Arezzo when Pompilia and Guillichini were accused. He died January 1698, and the Second Anonymous Pamphleteer hints that this was due to foul play.

36. *Guido Franceschini*, *b.* January 24, 1658, the youngest son of an impoverished, second-rate, noble family of Arezzo, had sought his fortune in Rome, where he became secretary of Cardinal Nerli. He dropped out of this service in middle life, with hardly a dollar in his pocket, and planned

to recoup his fortunes by marriage with Pompilia, the heiress of the well-to-do Comparini. After the marriage in December 1693, the Comparini accompanied him back to Arezzo. He seems to have been unattractive and saturnine, and later on proved himself both crafty and brutal.

37. *Abate Paolo Franceschini, b.* October 28, 1650, the older, shrewder, and more able brother of Guido, was more successful in seeking his fortunes in the official world of Rome. He became secretary of the powerful Cardinal Lauria, and on the death of the latter, November 30, 1693, obtained the lucrative office of Secretary of the Order of St. John of Malta. He assisted Guido in effecting the marriage with Pompilia, and was his active agent in Rome during the lawsuits which followed. In 1697 he lost his secretaryship because of the ignominy which had come upon him in Guido's shameful troubles, and left Rome, possibly, as he is accused by the Second Anonymous Pamphleteer, to assist in planning the murder of the Comparini.

38. *Honoris Causa.* As the fact of the murders by Guido and his cut-throats was subject to no dispute, the whole law case turns on the question whether these murders had been *for the sake of honour*, the ever repeated plea of the unwritten law for the right of the husband to slay a wife sinning against her wifehood. The lawyers devote themselves to ascertaining the limitations and privileges of this plea.

39. *Incontinenti, Ex Intervallo.* There is much argument on the justification for honour's sake in murder done *immediately* after the insult, or *after an interval* of time has elapsed. In the latter case, the murder becomes premeditated, and is not justifiable on the ground of excusable heat of passion at an insult.

40. *The Aggravating Circumstances.* The prosecution makes much of the attendant criminal circumstances which surrounded the main crime of murder. These are first, the assembling of a band of armed men, constituting the crime of rebellion; second, the murder of a prisoner while under the care of the courts, Pompilia being technically a prisoner detained in the Process of Flight; third, the assault upon opponents in a pending lawsuit, the Comparini then being at law with Guido; fourth, the violent breaking into a private home; fifth, the commission of crime under cover of disguise; sixth, the use of certain types of barbarous weapon, the very possession of which was a capital offence. The first three of these were *laesa majestas*, criminal insult to the majesty of the law.

41. *San Lorenzo in Lucina.* This church in the heart of Rome just off the Corso, and not very far from the home of the Comparini at the corner of Via Vittoria, and Strada Paolina, was evidently the parish church of the Comparini, as both the birth and death of Pompilia are entered in its register.

42. *Castelnuovo.* A village of but a few houses, fifteen miles north of Rome. The inn and posthouse where Pompilia and Caponsacchi were overtaken by Guido thus became one of the most important scenes in the tragedy.

43. *Torture of the Vigil.* Guido and his companions were tortured thus, to get fuller testimony from them. This torture consisted originally in merely keeping the victim awake until he told his crime. Later on his confession was accelerated by auxiliary devices for intensifying the suffering of the subject.

44. Browning has taken the peroration used in the first lawyer's monologue, *R.B.* VIII. 1637-1736, directly from the peroration of Arcangeli in Pamphlet 8, p. 130.

45. The description of the execution as given in *R.B.* XII. 113 *et seq.* is taken from the additional Italian pamphlet, pp. 265-6.

46. In like manner *R.B.* VIII. 587-683, is closely drawn from the *Book* pp. 153-4, with an interpolation in lines 640-57 from page 226. More than fifty of such word to word borrowings from the *Book* are made in this monologue.

### Minute of the Definite Order of Events in the Case

July 17, 1680. Pompilia born. (Note 27).
December (?) 1693. Pompilia married to Guido Franceschini.
December 1693. The Comparini accompany the bride to Arezzo.
Four months residence together in Arezzo.
Domestic broils in Arezzo, January and February, 1694.
March 1694. The Comparini return to Rome.
April or May 1694. Violante reveals base parentage of Pompilia.
June 14, 1694. Pompilia's letter to Abate Paolo. (Note 16).
June 24, 1694. Affidavit of Angelica. (Note 13).
Summer of 1694. Pietro Comparini prosecutes suit to recover dowry.
August 2, 1694. Letter of the Governor to Abate Paolo.
September 15, 1694. Letter of the Bishop of Arezzo to Abate Paolo.
March 1697. Pompilia seeks aid of Confessor Romano.
April, 1697. Seeks aid of Guillichini, Conti, and Caponsacchi.
April 29 (1 a.m.). Pompilia flees.
April 30 (in the evening). Fugitives arrive at Castelnuovo.
May 1 (early in the morning). Guido overtakes fugitives and has them arrested.
May 3. Pompilia writes from the prison of Castelnuovo.
May 13. Pompilia makes her deposition. (Note 19).
May 21. Pompilia is further cross-examined.
June 17, 1697. Certain persons in Arezzo make affidavit in Pompilia's behalf. (Note 14).
Summer of 1697. The Process of Flight. (Note 18).
September 24, 1697. Caponsacchi sentenced to relegation. (Note 22).
October 12. Pompilia permitted to return home under bond. (Note 25)
Fall of 1697. Pompilia institutes suit for divorce.
Fall of 1697. The Franceschini push a criminal suit against Pompilia in the criminal courts of Arezzo. (Note 3).
Fall of 1697. Abate Paolo loses his secretaryship of the Order of St. John
December 18, 1697. Pompilia gives birth to a son.
December 24, 1697. Guido and his cut-throats arrive in Rome.
January 2, 1698. Guido murders his wife and the Comparini.
January 3. Guido and his associates arrested and imprisoned.
January 6. Pompilia dies.
January 19. Fra Celestino makes affidavit. (Note 17).
January 1698. The murder trial begins.
January 1698. Conti dies in Arezzo.
January 1698. Sta. Maria Maddalena delle Convertite institutes suit to gain Pompilia's estate. (Note 10).
End of January. The torture of the Vigil. (Note 43).
February 1698. The second stage of the murder trial.
February 9. Certificate of the baptismal record of Pompilia obtained (Note 27).
February 15. Certificate of the Tuscan criminal prosecution of Pompilia obtained. (Note 3).
February 18. Guido declared guilty, but a stay of sentence granted.
February 21. Execution set for following day. The Pope overrules delay
February 22, 1698. The murderers are executed.
Spring of 1698. The Franceschini bring suit to recover Pompilia's property

May 17. The criminal court decides in favour of Pompilia's executor.
September 1-9, 1698. Final decree of court, utterly clearing Pompilia's reputation.

Browning uses all the above chronology with scrupulous accuracy, save when, for good artistic reasons, he changes the flight from April 29 to the 23rd, St. George's day.

MINUTE OF THE PERSONAL NAMES FOUND IN THE BOOK AND PAMPHLET AND USED BY BROWNING IN HIS POEM

Franceschini, Signor Guido. (Note 36).
Franceschini, Abate Paolo. (Note 37).
Franceschini, Canon Girolamo, *b.* August 5, 1654, brother of Guido.
Franceschini, Donna Beatrice, 1631-1701, mother of Guido.
Franceschini, Count Tommaso, father of Guido.
Comparini, Signor Pietro, father of Pompilia.
Comparini, Violante, mother of Pompilia.
Comparini, Pompilia. (Note 33).
Canon Conti. (Note 35).
Canon Giuseppe Caponsacchi. (Note 34).
Signor Guillichini, helper in the flight.
Borsi, the driver.
Signor Marzi-Medici, Governor of Arezzo.
Bishop of Arezzo, Giovanni Matteo Marchetti, 1691-1704.
The Confessor Romano.
Maria Margherita Contenti, servant in the Franceschini home.
Monna Baldi (Albergotti).
Cardinal Panciatichi, Cardinal Acciajuoli } Guido's confessors on the eve of execution.
Signor Tighetti, trustee of Pompilia's estate.
The babe, Gaetano.
Fra Celestino, confessor of the dying Pompilia.
Signor Giacinto Arcangeli. (Note 5).
Signor Bottini. (Note 7).
Signor Spreti. (Note 6).
Signor Cencini, a Florentine lawyer interested in the murder trials.
Alessandro Baldeschi, Domenico Gambassini, Francesco Pasquini, Biagio Agostinelli } The assassins.
Curate Ottoboni, Curate at San Lorenzo, in Lucina.
Judge Tommati, Auditor Curiae.
Judge Molines, of the Ruota.
Marco Antonio Venturini, Vice-Governor, presiding in the murder case.

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